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No. 10688

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

GILFILLAN BROS., INC.,

Respondent.

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Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 342


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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board

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Pages 1 to 342

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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board



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BOARD'S EXHIBIT No. 1-A

United States of America  
Before the National Labor Relations Board  
21st Region

Case No. XXI C2281

Date Filed 3/8/43

In the Matter of—

GILFILLAN BROS. INC.,

and

INTL. ASSN. OF MACHINISTS, DISTRICT  
LODGE No. 94, for and on behalf of LODGE  
311, AFL

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Gilfillan Bros. Inc. at 1815 Venice Blvd., Los Angeles, California (DRexel 5131) employing 375 workers in manufacture of hydraulics and cables has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) (2) and (3) of said Act, in that the Company, by its officers, agents and employees, has dominated and interfered with the operation and administration of the Employees Mutual Association and has contributed financial and other support thereto, in violation of Section 8, subsection (2) of said Act.

On or about the dates hereinafter specified, the Company, by its officers, agents and employees, terminated the employment of:

Myrtice DeShazo	2/22/43	Eloise Long	2/22/43
Mary Higgins	2/22/43	Daisy Mix	2/22/43
Rex D. Janes	2/23/43	Walter Ramsey	2/23/43
Edna Jones	2/22/43	Ella Richardson	2/22/43
Bill Klingaman	2/23/43	Mary Sharman	2/22/43
		Alice Taylor	2/22/43

because of their membership and activities in behalf of Lodge No. 311, International Association of Machinists, a labor organization, and at all times since such dates it has refused and does now refuse to reinstate the above named employees, in violation of Section 8, subsection (3) of said Act.

By the acts set forth in the paragraphs above, and by other acts and statements, the Company, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subsection (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affilia-

tion of organization, and name and official position of the person acting for the organization.)

INTL. ASSN. OF MACHINISTS,  
DISTRICT LODGE NO. 94, for  
and on behalf of LODGE 311,  
AFL

By: ROSCOE V. ICKES

Roscoe V. Ickes, Organizer  
532 Maple Ave., Los Angeles,  
Calif. Phone: MUtual 2389

Subscribed and sworn to before me this 8 day of  
March, 1943, at Los Angeles, California.

QUENTIN OGREN

Quentin Ogren, Field Examiner  
National Labor Relations Board,  
21st Region, Los Angeles, Calif.

---

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

Case No. 21 C2281

Date Filed 5/5/43

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Gilfillan Bros., Inc. at 1815 Venice Blvd., Los Angeles, California (DRexel 5131) employing 400 workers in the manufacture of aircraft parts has engaged in and is engaging in unfair labor practices

within the meaning of Section 8 subsections (1) (2) and (3) of said Act, in that on or about January 1, 1937, the company, by its officers, agents and employees, formed among its employees at its Los Angeles plant a labor organization known as the Employees Mutual Association, and at all times since said date has dominated and interfered with the operation and administration of the said Employees Mutual Association, and has contributed financial and other support thereto, in violation of Section 8, subsection (2) of said Act.

On or about February 22, 1943, the company, by its officers, agents and employees terminated the employment of:

Bess Allison

Daisy Mix

Anna Cox

Ella Richardson

Myrtice De Shazo

Mary Sharman

Mary Elsenius

Alice Taylor

because of their membership and activities in behalf of Lodge No. 311, International Association of Machinists, a labor organization, and at all times since such date it has refused and does now refuse to reinstate the above-named employees, in violation of Section 8, subsection (3) of said Act.

Further, the company, by its officers and agents, interfered with and discouraged the efforts of its employees at self-organization by making derogatory and uncomplimentary statements to employees regarding the Union; by stating to employees that union membership would not serve to better their wages or other conditions of employment, that such

membership would in fact render such conditions less favorable; by referring to members as racketeers; by threatening to eliminate overtime work; by granting wage increases without notice to the Union and by denying the company bulletin boards to the Union although permitting their use by the Association.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, name and official position of the person acting for the organization.)

INTL. ASSN. OF MACHINISTS,  
DISTRICT LODGE No. 94, and  
on behalf of LODGE 311, AFL

By: ROSCOE V. ICKES

Roscoe V. Ickes, Organizer  
532 Maple Ave., Los Angeles,  
Calif. Phone: MUtual 2389

Subscribed and sworn to before me this 5th day of  
May, 1943. At Los Angeles, California.

QUENTIN OGREN

Quentin Ogren, Field Examiner  
National Labor Relations Board,  
21st Region, Los Angeles, Calif.

## BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

## COMPLAINT

It having been charged by the International Association of Machinists, District Lodge #311, affiliated with the American Federation of Labor, hereinafter referred to as the "Union", that Gilfillan Bros., Inc., a corporation, hereinafter referred to as the "Respondent", at Los Angeles, California, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as the "Act", the National Labor Relations Board by the Regional Director for the Twenty-first Region designated as agent of said National Labor Relations Board by its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is, and at all times mentioned herein, has been a corporation organized and existing under and by virtue of the laws of the State of California. Respondent has its offices and place of business at Los Angeles, California, where it is engaged in the manufacture of airplane parts and kindred products.

2. Respondent, in the course and conduct of its business and in the operation of its plant at Los Angeles, California, causes and has continuously caused large quantities of its products to be sold, trans-



ported and distributed in interstate and foreign commerce from its plant at Los Angeles, into and through States of the United States other than California and into foreign countries.

3. Respondent in the course and conduct of its business and in the operation of its plant at Los Angeles, causes and has continuously caused large quantities of materials, supplies, machinery and equipment to be purchased and transported in interstate and foreign commerce from and through States of the United States other than the State of California to its plant at Los Angeles, California.

4. District Lodge #94 and #311 of the International Association of Machinists, A.F.L. and the Employees Mutual Association, hereinafter referred to as the "Association", are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

5. Respondent, while engaged at its place of business at Los Angeles, as described in paragraphs 1, 2, and 3 above, by and through its officers, agents and supervisors, including without limitation John K. Semple, S. W. Gilfillan, I. B. Sparks, Louis Winterburn, Oswald Lindberg, Marjory Geobels, Laurita Schwertfeger, Roy Johnson and Richard Wattleton did, on or about January 1, 1937, sponsor, promote, encourage, assist, financially and otherwise, and interfered with the formation of the Association, and has at all times since that date dominated and interfered with the administration of said Association and contributed support thereto.

6. Respondent while engaged in the course of conduct described in paragraph 5 above, did on or about January 1, 1937, and at yearly intervals since that time, including most recently on or about April 30, 1943, enter into alleged collective bargaining agreements with the Association, by the terms of which said agreements the Association was recognized as exclusive collective bargaining representative of Respondent's employees. Said agreements were executed while the Respondent was engaged in assisting, encouraging and maintaining the contracting labor organization, as more fully described in paragraph 5 above, and said agreements therefore were and are invalid, illegal, void and of no effect, and should be set aside in order to effectuate the policies of the Act.

7. By the acts and each of them described in paragraphs 5 and 6 above, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

8. Respondent, while engaged at its place of business at Los Angeles, as described in paragraphs 1, 2 and 3 above, did, on or about February 22, 1943, discharge the following named employees:

Bess Allison, Anna Cox, Myrtise De Shazo, Mary Elsenius, Daisy Mix, Ella Richardson, Mary Sharman, Alice Taylor,

because of their membership in and/or activity on behalf of the Union; and the Respondent has refused and failed to reinstate and employ said persons, and continues in its failure and refusal to reinstate and employ said persons since said date of discharge.

9. By the acts and each of them described in paragraph 8 above, Respondent did discriminate in regard to the hire and tenure of employment of the aforesaid employees, and did discourage and is discouraging membership in the Union, and has engaged and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

10. On or about January 10, 1943, Respondent by and through its agents, officers and supervisors, including without limitation S. W. Gilfillan, president, Louis Winterburn, superintendent, and J. W. Lantzy, entered upon and engaged in a course of action, which course of action has persisted until the present time, for the purpose and with the effect of discouraging Respondent's employees from affiliating themselves with, or being active on behalf of the Union; by making derogatory and uncomplimentary statements to employees regarding the Union; by stating to employees that union membership would not serve to better their wages or other conditions of employment; that such membership would in fact render such conditions less favorable; by referring to members and officials of the Union as racketeers and undesirable foreigners; by threatening to cancel smoking and other privileges and to reduce or eliminate overtime work; and by denying the privilege of the company bulletin boards to the Union although permitting the use of its bulletin boards by the Association without limitation or restraint.

11. By the acts and each of them described in paragraph 10 above, Respondent interfered with, coerced and restrained, and is interfering with, coercing and restraining its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

12. The acts of the Respondent as set forth in paragraphs 5, 6, 8 and 10 above constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2) and (3), and Section 2, subsections (6) and (7) of the Act.

13. The acts of the Respondent as set forth in paragraphs 5, 6, 8 and 10 above, occurring in connection with Respondent's operations as described in paragraphs 1, 2 and 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 22th day of May, 1943, issues its complaint against Gilfillan Bros. Inc., a corporation.

[Seal]

E. J. EAGEN

E. J. Eagen, Regional Director Na-  
tional Labor Relations Board,  
Twenty-first Region

BOARD'S EXHIBIT No. 1-D

[Title of Board and Cause.]

NOTICE OF HEARING

Please Take Notice that on the 7th day of June, 1943, at 10:00 A.M. in Room 901, at 111 West Seventh Street, Los Angeles, California a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Region, with offices at 111 West Seventh Street, Ninth Floor, Los Angeles, California, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for



the Twenty-first Region on this 22nd day of May, 1943.

[Seal]

ELWYN J. EAGEN

Elwyn J. Eagen, Regional Director.  
National Labor Relations Board.

---

BOARD'S EXHIBIT No. 1-E

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 22nd day of May 1941, I served by postpaid registered mail, bearing Government frank, a copy of Notice of Hearing, Charge and Complaint to the following named persons, addressed to them at the following addresses:

Gilfillan Bros., Inc.

1815 Venice Blvd.

Los Angeles, California

International Association of Machinists, District Lodge No. 94

532 Maple Avenue

Los Angeles, California

Employees Mutual Association  
c/o Gilfillan Bros., Inc.  
1815 Venice Blvd.  
Los Angeles, California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 22nd day  
of May 1942.

HELEN W. ELLIS

Los Angeles, State of  
California.

Designated Agent, N.L.R.B.

[Printer's Note: Registered Receipts and Return Card Receipts for Notice of Hearing, Charge and Complaint, attached to above exhibit.]

---

BOARD'S EXHIBIT No. 1-J

[Title of Board and Cause.]

ANSWER OF RESPONDENT, GILFILLAN  
BROS., INC.

Comes Now the Respondent, Gilfillan Bros., Inc., and answering the complaint filed in the above entitled matter, admits, denies and alleges as follows:

1. Answering Paragraph 5 of the complaint, Respondent denies that at the times or places alleged or described in said paragraph, or at any other

time or place, this Respondent, by or through its officers, agents or supervisors, or any of them, sponsored, promoted, encouraged, assisted, financially or otherwise, or interfered with the formation of Employees Mutual Association, and denies that it has at all times or at any time dominated or interfered with the administration of the said Association or contributed support thereto. Denies that Oswald Lundberg, Marjory Goebels, Laurita Schwertfeger, Roy Johnson or Richard Wattleton are now, or were, at any of the times mentioned in the complaint, officers, superintendents or agents of Respondent, but admits that said Oswald Lundberg, Richard Wattleton, Marjory Goebels, Laurita Schwertfeger and Roy Johnson were, during portions of said time, employees of Respondent.

2. Answering Paragraph 6, Respondent admits that it has, on various occasions since on or about August, 1937, entered into collective bargaining agreements with Employees Mutual Association, and has, under and in accordance with the Order of Certification of the National Labor Relations Board, recognized said Employees Mutual Association as the exclusive bargaining representative of Respondent's employees, and alleges the fact to be that said Employees Mutual Association was, after election duly conducted by the National Labor Relations Board, certified by said Board to the Respondent as the labor organization entitled to act as the exclusive bargaining representative of Respondent's employees, and that Respondent is informed and believes and alleges the fact to be that said Employees



Mutual Association is now and has, at all times since said election, represented the majority of Respondent's employees. Respondent denies that any of said agreements were executed while Respondent was engaged in assisting, encouraging or maintaining said Employees Mutual Association, or that it has assisted, encouraged or maintained said organization, and denies that said contracts, or any of them, are invalid, illegal, void or of no effect.

3. Respondent denies each and all of the allegations of Paragraph 7 of the complaint.

4. Answering Paragraph 8 of the complaint on file herein, Respondent admits that it did discharge the employees named and described in said paragraph at or about the time described in said paragraph, but denies that said employees, or any of them, were discharged because of their membership and/or activity on behalf of any union, and denies that Respondent has, or does refuse to re-instate and employ said persons.

5. Respondent denies each and all of the allegations of Paragraph 9 of the complaint.

6. Respondent denies each and all of the allegations of Paragraph 10 of the complaint.

7. Respondent denies each and all of the allegations of Paragraph 11 of the complaint.

8. Respondent denies each and all of the allegations of Paragraph 12 of the complaint.

9. Respondent denies each and all of the allegations of Paragraph 13 of the complaint.

GILFILLAN BROS., INC.

1815 Venice Boulevard

Los Angeles, California

NOURSE & JONES

By PAUL NOURSE

Attorneys for Respondent,  
Gilfillan Bros., Inc.

1017 Rowan Building

Los Angeles, California

State of California

County of Los Angeles—ss.

S. W. Gilfillan, being first duly sworn, deposes and says: That he is the President of Gilfillan Bros., Inc., the Respondent named in the foregoing Answer; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

S. W. GILFILLAN

S. W. Gilfillan

Subscribed and sworn to before me this 1st day of June, 1943.

MARGUERITE BAUER

Notary Public in and for the County of Los Angeles, State of California

[Stamped]: Received Jun 3 — 1943 National Labor Relations Board Twenty-first Region Los Angeles

BOARD'S EXHIBIT No. 1-L

[Title of Board and Cause.]

INTERVENTION

Application is hereby made on behalf of Gilfillan Employees Mutual Association for intervention in the above entitled action, and that they be allowed to participate in any and all hearings in regard to same, and leave is asked to file any answer or other necessary papers, records or documents that may be considered necessary by counsel.

FLANAGAN, WILSON &  
THOMAS

By PHILIP L. WILSON JR.

Attorneys for Gilfillan Em-  
ployees Mutual Association.

[Title of Board and Cause.]

Mr. William B. Esterman, for the Board.

Nourse & Jones, by Mr. Paul Nourse and Mr.  
Everett W. Thompson of Los Angeles, Calif.,  
for the respondent.

Mrs. Myrtle M. Volz and Mr. Bennie C. Dale, of  
Los Angeles, Calif., for the I.A.M.

Mr. Phillip L. Wilson, Jr., of Los Angeles, Calif.,  
for the Association.

## INTERMEDIATE REPORT

### Statement of the Case

Upon amended charges duly filed on May 5, 1943, by International Association of Machinists, District Lodge #94, for and on behalf of Lodge #311, herein called the I.A.M., the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated May 22, 1943, against Gilfillan Bros., Inc., Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notices of hearing thereon were duly served upon the respondent, the I.A.M., and also upon Gilfillan Employees Mutual Association, herein called the Association.

With respect to the unfair labor practices the complaint alleged in substance that the respondent: (1) through various officers, agents, and supervisors sponsored, promoted, assisted, and interfered with the formation of the Association, dominated and interfered with its administration, and contributed support thereto; and that various collective bargaining agreements executed between the respondent and the Association at various times from 1937 to 1943 were illegal, and should be set aside; (2) discouraged its employees from affiliating with or being active on behalf of the I.A.M. by making uncomplimentary statements to the employees regarding the I.A.M.; stating that union memberships would not serve to better their conditions of employment, but would in fact render such conditions less favorable; referring to members and officials of the I.A.M. as racketeers and undesirable foreigners; threatening to cancel smoking and other privileges and to reduce or eliminate overtime work; and by discriminating between the I.A.M. and the Association with respect to the use of company bulletin boards; (3) on February 22, 1943, discharged and has since failed and refused to reinstate Bess Allison, Anna Cox, Myrtice DeShazo, Mary Elsenius, Daisy Mix, Ella Richardson, Mary Sherman; and Alice Taylor, because of their membership in, and activity on behalf of, the I.A.M.

Pursuant to notice, a hearing was held at Los Angeles, California, from June 30 to July 16, 1943, before the undersigned, Charles W. Schneider, the Trial Examiner duly designated by the Chief Trial



Examiner. The Board, the respondent, and the Association were represented by counsel and the I.A.M. by representatives, and all parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the hearing the Association filed a motion to intervene, which was granted by the undersigned to the extent of the Association's interest in the proceedings. The respondent filed an answer denying the commission of the alleged unfair labor practices. During the course of the hearing the respondent and the Association moved to dismiss the complaint on the ground that the Appropriation Bill of 1944 had deprived the Board of jurisdiction to proceed.<sup>1</sup> The undersigned denied these motions. During the hearing counsel for the Board moved, without objection, to amend the complaint. The undersigned granted the motion.<sup>2</sup> At the conclusion of the hearing the parties argued orally before the Trial Examiner, but stated that they did not desire to file briefs.

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<sup>1</sup>National Labor Relations Board Appropriation Act, 1944, Title IV, Act of July 12, 1943, P.L. 135, 78th Congress, 1st Session.

<sup>2</sup>The effect of the amendment was to delete from the complaint all allegations that contracts between the respondent and the Association were illegal, other than a contract alleged in the complaint to have been made on or about May 1, 1943. The amendment averred that the latter agreement was invalid and should be set aside.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

## FINDINGS OF FACT

### 1. The business of the respondent

Gilfillan Bros., Inc., is a California corporation engaged in the production of war materials. Prior to 1940, the respondent manufactured radios and refrigerators. During 1942, more than 11 per cent of the materials purchased by the respondent, amounting in value to more than \$100,000.00, were received from sources outside the State of California. These purchases were made in the performance of contracts with the United States Government. During the same period the respondent shipped to points outside the State of California, products valued in excess of \$100,000.00, amounting to 28 percent of the respondent's total volume of production in 1942.

### II. The organizations involved

International Association of Machinists, District Lodge #94 and Lodge #311, and Gilfillan Employees' Mutual Association, are labor organizations admitting to membership employees of the respondent.

### III. The unfair labor practices

#### A. Domination of and Interference with the Association; Events prior to 1941

Early in 1937 the United Electrical, Radio and Machine Workers of America, Local 1421, an affi-

liate of the C.I.O., began an organizational campaign among the respondent's employees. At about the same time, several employees approached John R. Semple, then the respondent's personnel manager, and asked him to advise on how to form an unaffiliated union. Semple referred the employees to the library and to Roberts' Rules of Order. Subsequently the Association held its first meeting in the respondent's plant. Semple made the arrangements for the use of the plant for that meeting.<sup>3</sup>

On May 1, 1937, Local 1421 filed a petition with the Regional Office of the Board, requesting certification as collective bargaining representative of the respondent's employees. A consent election was held on May 19, 1937, with Local 1421 and the Association on the ballot. The election was won by the Association, which was then certified by the Regional Director as the bargaining agent of the employees. About August, 1937, the respondent entered into a collective bargaining agreement with the Association. Various renewal contracts have been negotiated from time to time since. The latest of these agreements was executed about May 10, 1943, effective May 1.

Within a short time after the organization of the Association, the respondent began to contribute to the Association the proceeds of various vending machines located in the plant. This income had

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<sup>3</sup>Semple testified that the Association's organizers told him that they had no money, and that he then had space cleared on the upper floor of the plant, where the Association met.



previously been divided between the respondent and the owner of the machines. Thereafter, the respondent continued to receive the proceeds but made periodic remittances thereof to the Association.<sup>4</sup> That arrangement has continued down to the present time.<sup>5</sup>

In the summer of 1937, the respondent sponsored a picnic for the employees. In 1938 the Association asked and received permission to become the sponsor of the picnic for that year. The Association's name appeared on the publicity advertising the picnic. It was unable, however, to finance the affair adequately. Semple thereupon asked

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<sup>4</sup>These findings are based on the testimony of Semple. He testified that the Association was "constantly short of funds" and that a committee came to him and asked that the proceeds of the machines be contributed to the organization. Semple then arranged with the respondent's president, S. W. Gilfillan, for the transfer of the income.

<sup>5</sup>Semple testified that at that time the income from the machines was about \$12.00 a month. Semple left the respondent's employ in 1939. For the period from July, 1941, through March, 1943, the Association's income from dues was \$532.46. During the same period, the respondent paid over to the Association, from the receipts of Coca Cola and candy machines, the sum of \$333.10. At the time of hearing, the respondent was also carrying on its books an account payable to the Association, in the amount of \$30.00, representing income from candy machines only. \$15.00 of that sum was for such income from January to March, 1943; the remainder represented income after March. The account did not include receipts from Coca Cola. Dues collections and vending machine income for other periods were not disclosed.

President Gilfillan to underwrite whatever deficit the Association incurred, in order that the standard set by the picnic of 1937 could be maintained. Gilfillan agreed. The respondent's vice president, Sparks, induced various merchants to donate prizes. All employees and their families and friends were invited to attend. The respondent subsequently liquidated a deficit of from \$100 to \$200 incurred by the Association in sponsoring the picnic.

#### The 1941 charges

On May 6, 1941, Local 311 of the I.A.M. filed charges alleging that the respondent had discriminately discharged an employee, had "encouraged and interfered with the formation" of the Association and had otherwise interfered with, restrained and coerced its employees. On the recommendation of Field Examiner Cameron, and with the approval of the Regional Director, the case was subsequently settled and the charges withdrawn. Pursuant to the terms of the settlement, the respondent on November 11, 1941, in a letter to the Regional Office, stated that it would (1) "instruct its foremen and leadmen not to accept places on committees of labor organizations having members in the employ of [the respondent] and not to influence the employees with respect to union affiliations in any other manner;" (2) ". . . not in any manner dominate or interfere with the administration of the . . . Association or any other labor organization [of its employees]"; and (3)

post the statement for a period of sixty days. The respondent immediately posted in the plant a carbon copy of the letter.

### Events of 1943

About January 10, 1943, the I.A.M. began an organizational campaign among the respondent's employees. Handbills and authorization cards were distributed at the gates of the plant. On February 17 and 26, open meetings were held by the I.A.M. at a hall near the plant for the purpose of explaining the I.A.M. to the respondent's employees. By late February a substantial number of the employees had signed I.A.M. authorization cards or applications for membership.

On February 22, the night shift of women employees in the burr and rework department of the machine shop was abolished. Of the 20 employees in the department 6 were transferred to the day shift, the remainder were laid off.<sup>6</sup> The lay-offs were made on the basis of seniority.

On February 23, 1943, the I.A.M. filed with the Regional Office of the Board a petition claiming that the I.A.M. represented a majority of the respondent's production and maintenance employees and requesting an investigation and certification of representatives. On February 27, the respondent and the Association received notice from the Regional Office of the filing of the petition.

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<sup>6</sup>The circumstances surrounding these lay-offs are discussed more fully *infra*, Section III, B.

About March 6, the officers of the Association met with S. W. Gilfillan, president of the respondent, in the latter's office, to discuss the renewal of the 1942 contract between the Association and the respondent. According to the testimony of Otto Stegner, Vice-President of the Association, Gilfillan asked how the Association was functioning, and whether it was in "good order"; and stated that if it was not, it should "get on its toes" and "combat" the election which the I.A.M. was demanding.<sup>7</sup>

According to the testimony of Association president, Roy Johnson, Gilfillan stated that he would not enter into a contract with the Association without assurance that it represented a majority. Johnson told Gilfillan that he would ascertain how many members the Association had. Several days thereafter, according to Johnson, when Gilfillan was "making the round" through the shop, Johnson told

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<sup>7</sup>These findings are based on the testimony of Stegner on direct examination. On cross-examination, Stegner testified that Gilfillan in substance said that if there was to be an election, he did not want to enter into any contract until he knew which organization represented the employees. The testimony of Roy Johnson, president of the Association, who testified later in the hearing, was similar to that of Stegner on cross-examination. Stegner did not, however, retract the specific statements he attributed to Gilfillan, nor did Johnson deny that they were in fact made. The undersigned accepts Stegner's direct testimony as to what Gilfillan said.



him the number of employees who had paid dues to the Association during the month of March.<sup>8</sup>

On March 8, the I.A.M. filed charges alleging that the respondent had dominated and interfered with the administration of, and contributed support to, the Association; and further alleging that by the lay-offs of February 22, the respondent had discharged its employees and discriminated against them because of their membership in and activities on behalf of the I.A.M. On April 12, the I.A.M. sent the respondent a letter stating, *inter alia*, that because of the unfair labor practice charges, the I.A.M. had "temporarily and without prejudice" withdrawn its petition for certification; but that the I.A.M. was the representative of the respondent's employees, and that any further collective bargaining between the Company and the Association would be "without legal force and effect" and would be "protested" by the I.A.M.

The 1942 contract between the respondent and the Association provided that it should terminate on April 30, 1943. On April 29, the respondent entered into an agreement with the Association extending the 1942 contract for a period of 30 days to June 1, 1943. Except for the statement made by

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<sup>8</sup>Johnson did not state what figures he gave Gilfillan. He had previously testified that 294 employees paid dues to the Association during March. However, Association dues collections in February totaled only \$36.75, and in March \$53.25. Dues are \$.25 monthly. The collections would thus represent 147 dues payments in February and 212 in March. The respondent employs in excess of 450 employees.

Johnson to Gilfillan, related above, as to the number of employees who had paid Association dues during March, no proof of majority was furnished by the Association.

Sometime between May 5 and 10, 1943, the Company entered into a new contract with the Association effective May 1, for a period of 1 year, and continuing thereafter subject to 30 days notice of termination. This contract substantially revamped the respondent's wage structure and provided for wage increases.

#### Use of the respondent's premises by the Association

Use of the respondent's premises by the Association for solicitation of membership and collection of dues was widespread. Harley Bucknell, a non-supervisory employee in charge of the tool crib in the machine shop, regularly and openly collected dues for the Association while on duty in the tool crib, to the knowledge of, and without objection from, the supervisors. On one occasion when Bucknell was absent from the tool crib, Alice Taylor, an employee in the burr department, was told by Margaret Goebel, leadlady, or forelady, over the burr department employees on the night shift, to pay her dues to Roy Johnson, which Taylor did.<sup>9</sup>

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<sup>9</sup>Leo Pflieger, treasurer of the Association, testified that Leadman Oswald Lundberg, Loretta Schwartfeger and Otto Stegner during 1942 and 1943 turned over to him money derived from dues collections. The supervisory status of these employees and of Goebel and Johnson is discussed *infra*.

Johnson also collected dues on various other occasions. Association memberships were openly solicited during working hours with no attempt at concealment and without rebuke from the supervisors. On the other hand, when General Foreman Walters apprehended an employee soliciting for the I.A.M. in the washroom, he told the employee that "that was one A. F. of L. rule—that they were specifically told not to [violate]."<sup>10</sup>

The Association's monthly meetings were held during working hours. Notices announcing these meetings were posted on the plant bulletin boards. The day shift ended at 6 p.m. The night shift began work at that time. Association meetings, lasting an hour or more, were held at 5:30 p.m. in order to catch both shifts. The employees were excused from work without pay in order to attend the meetings. Superintendent Cramer, when asked by Leadman George Nelson whether the employees should be allowed to attend the Association meeting of January 4, was told by Cramer that they would shut down. When Nelson asked if that was necessary, Cramer answered that it was, that "as an official of the Company," he could not say anything, but that the employees should all go to the

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<sup>10</sup>This finding is based on Walters' testimony. During the rest periods, which was time paid for by the company, there was some sporadic I.A.M. solicitation, but, except for one such incident cited by Walters, there is no evidence that it came to the attention of the supervisors.

meeting in a body; that they might get a raise out of it and keep some other union from coming in.<sup>11</sup> Nelson then instructed his employees to go to the meeting.

Leadlady Goebel told employees that they were expected to go to Association meetings.<sup>12</sup> Goebel regularly solicited memberships for the Association among the girls under her.<sup>13</sup> Foreman Brus-

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<sup>11</sup>This finding is based on the testimony of Nelson. Cramer testified that when notices of Association meetings were posted in the plant, he would be "flooded" with questions, such as "do we have to go?" "Should we go?" "Are you going to shut down the plant and make us go?"; and that he told the employees that they did not have to go. However, he testified that he probably did say to Nelson that "personally as an official of the company, [I] can't say anything, but that they should all go over there"; that "personally, if they expected to get any benefit from any association they should forfeit something to it. Therefore, I think they should go to it." Asked whether he told Nelson that the employees should go to the meeting in a body; that they might get a raise and keep out some other union, Cramer's testimony was "Not that I recall, no," and "I don't think so."

<sup>12</sup>This finding is based upon the testimony of Mary Elsenius, Alice Taylor, Myrtice DeShazo, and Ella Richardson. Goebel testified that she attended the meetings and that the girls always accompanied her; that she never told them that they had to go, but might have said that "it was time to go if they were going." The undersigned does not credit Goebel's denial.

<sup>13</sup>Anna Cox testified that Goebel told her, "we have a union of our own. If you want to join go to the tool crib and pay your dues." Elsenius



sow, a supervisory employee with authority to discharge, collected Association dues.<sup>14</sup>

The supervisory status of leadmen

The Board contended, and the respondent denied, that leadmen in the machine shop are supervisory employees. The following persons took part in Association activity while occupying the positions of lead employees: Margaret Goebel, whose activity had been discussed heretofore; James Clark,

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<sup>14</sup>Brussow signed an I.A.M. authorization card. There is no evidence that he engaged in any I.A.M. activity.

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testified that shortly after she was employed in November, 1942, Goebel asked Elsenius and Long, another employee, whether they belonged to the Association. Elsenius asked what the Association was. Goebel replied, "That is the employees union and everyone is expected to join." Elsenius then said that she was not in favor of company unions but that she "would join if it were compulsory." Goebel then told Elsenius to "Go to the tool crib and sign up with Mr. Bucknell." Taylor testified that she was asked by Goebel whether she had paid dues to the Association. When Taylor said that she had not, Goebel told her to go to Bucknell and join. Taylor then joined because she thought it was compulsory. Richardson testified that during the first week of her employment she was asked by Goebel whether she had joined the Association. When Richardson replied that she had not, Goebel told her to go to Bucknell who would take her application and give her a card. DeShazo testified that several days after she was employed, Goebel suggested that DeShazo see Bucknell about joining the Association. DeShazo did not do so at that time. Some time afterward Bucknell sent

former night milling machine leadman, who was elected to the Association grievance committee in January or February 1943.<sup>15</sup> Oswald Lundberg, day milling machine leadman, and a former president of the Association, to whom Bucknell regularly turned over, for transmission to Pflieger, Association dues which Bucknell had collected. Bucknell testified that he had been collecting As-

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<sup>15</sup>The testimony of Johnson was that Clark did not act on the committee. The undersigned does not deem that fact to be controlling, in view of Clark's election at an open meeting of the Association.

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word to DeShazo that he wanted to see her in the tool crib. DeShazo then joined the Association. DeShazo further testified that in February Goebel asked her whether her dues were paid up in the Association. DeShazo told Goebel that she did not intend to pay any more dues. Goebel then said that DeShazo had no reason to object to paying dues since at the only meeting which DeShazo attended she had won a War Bond. Goebel testified that she was a member of the Association and attended most of the meetings and stated that she would speak to the girls about joining the Association after they "were there for a while" and tell them that, "if they cared to join to go down to Bucknell at the tool crib and he would explain it to them." The undersigned credits the above mentioned testimony of Cox, Elsenius, Taylor, Richardson, and DeShazo. The 1942 contract provided that new employees were to become members of the Association after 4 week's employment, and old employees within 90 days from the execution of the contract "without coercion on the part of management". In practice, the provision requiring membership as a condition of employment was not enforced.

sociation dues "near to a year," and that he began to do so at the request of Lundberg; Al (A.V.) Bleuel, present night milling machine leadman, who was a member of the Association committee which negotiated the 1943 contract with the respondent, and whose signature appears thereon as a representative of the Association; Roy Johnson, acting or temporary leadman on the milling machines, swing shift, who is president of the Association and has participated prominently in all its activity;<sup>16</sup> and Walter Scheid, who since February 7, 1943, has been general foreman of the swing shift, and prior to that was a leadman on the automatic screw machines. Late in 1940 the plant was destroyed

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<sup>16</sup>The respondent's evidence with respect to the status of Johnson, was that he was made a temporary leadman in July, 1942 because the respondent was unable to secure a competent leadman; that Johnson was appointed with the understanding that he would exercise no supervisory authority and would occupy the position only until a competent leadman could be secured; that he did not receive a leadman's pay; that several men were thereafter tried out in the position, but that for various reasons they proved unsatisfactory; that in February, 1943, when a competent leadman was secured, Johnson was transferred to a turret lathe as an operator, without any change in pay. From September 13, 1942, to February 28, 1943, Johnson received raises aggregating \$.14 $\frac{1}{2}$  per hour. The testimony of Goebel, Nelson, Richardson, and Hines, discloses that whatever limitations were imposed on Johnson's actual authority, he was regarded in the plant as a leadman. The undersigned finds that he occupied such a position from July, 1942 to February, 1943, while president of the Association.

by fire. In the following June, after its reconstruction, Scheid was appointed at an Association meeting, as a "committee of one" to arrange for the installation of new vending machines. Scheid spent several days consulting with vendors. When the machines were installed he took charge of them and arranged for the income to be sent to the respondent, for the credit of the Association.

Johnson, Lundberg, and Bleuel were paid by the Association for time lost from work while on Association business.

Under General Superintendent Cramer, in the machine shop are 3 general foremen, one in charge of each shift, and having authority to discharge. Under each of the general foremen on the day and night shifts are 4 to 5 leadmen or foremen,<sup>17</sup> each having charge of from 7 to 20 employees.<sup>18</sup> There are no leadmen on the swing shift. Some of these leadmen also have set-up men under them. Night General Foreman Walters testified that the set-up man is subordinate to the leadman, and that the latter is "boss." Leadmen have no authority to hire or discharge. They are hourly paid and,

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<sup>17</sup>Witnesses used both terms in describing these employees. The 1943 contract refers to them as "foremen." For the purpose of clarity they will be uniformly referred to herein as leadmen.

<sup>18</sup>Equipment in the machine shop consists of 14 automatic screw machines, 14 turret lathes, 10 milling machines, and 43 drill presses. At the time of the events herein, there was a leadman for each of those groups of machines. Goebel's burr department also comprised part of the machine shop.



under the terms of the 1942 and 1943 contracts, receive 15 cents more per hour than "their setup [or] top man."<sup>19</sup>

Leadmen set up the machines, run off several sample parts, check them for correction, and, if the result is satisfactory, turn over the machine to the operator. If the operator has sufficient experience to set up his own machine, the leadman oversees the setting up, and checks the final result before the operator begins production. After the machine is in operation, the leadman returns at intervals to check quality and blue print tolerances and, in general, oversees the operation. Except on the automatic screw machines, the leadman normally does no production work.

According to the respondent's testimony, leadmen were created in 1941 because of the inability to secure experienced operators who could set up their own machines. Vice-president Sparks testified that their only authority over the operator is to report to the foremen unsatisfactory work or violation of the leadmen's instructions; and that the foremen are instructed to make their own investigation of complaints by the leadmen before disposing of them. Superintendent Cramer testified that when leadmen complained to him concerning operators, he made his own investigation. However, General Foreman Walters relied on his lead-

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<sup>19</sup>The 1943 contract provides that set-up men are to be paid "at least \$.10 more than the top men under them."

men to ascertain the facts respecting an employee's standard of performance; consulted with them respecting decisions, allowed them "a good bit to say," and gave weight to their opinions.

In the burr department, under Leadlady Goebel, there were from 15 to 20 girls, mainly inexperienced, to whom Goebel assigned work and gave instructions. Goebel frequently selected employees from this group to do machine work when the machine leadmen requested extra help. However, when she could not spare the girls, Goebel would refuse to permit their transfer, unless ordered to do so by the foreman.

Leadman Nelson recommended to Walters the discharge of a number of employees. One or two of these were transferred to the day shift. The remainder were discharged. Walters testified that he believed that he followed all of Nelson's recommendations. Goebel reported two employees as incompetent. They were discharged. Leadman Lundberg "recommended" discharges and gave opinions to his supervisors, concerning employee's performances, which were given weight.<sup>20</sup>

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<sup>20</sup>In an affidavit which he made to a Field Examiner of the Board, prior to the hearing, Lundberg stated that, "I did not have authority to fire on my own but I did have authority to recommend the discharge of employees . . ." At the hearing Lundberg denied that he had authority to recommend discharge, and testified that by the statement in the affidavit he meant that he could "suggest" discharge. He also testified that his superiors consulted with him with respect to the calibre of work of the operators under him, and that he "suggested"

By the settlement agreement of 1941 the respondent agreed to "instruct its foremen and leadmen not to accept places on committees of labor organizations . . . and not to influence the employees with respect to union affiliations in any other manner." The agreement obviously constituted a recognition that the status of leadmen was such that prominent union activity by them was inconsistent with the respondent's duty to maintain neutrality in the matter of employee organization. The posting of the settlement agreement served notice of that fact on the employees. Other factors, also, suggest the identification of leadmen with management in the eyes of the employees, the respondent, and the Association. Thus the contract of 1942 referred to employees as being "*under [the] supervision*" of leadmen, and significantly provided that the respondent should have "complete control over the leadmen as to their *selections and working conditions*." (Italics added) Moreover, it is evident from the testimony that some of the employees regarded leadmen as their superiors, or "bosses." General Foreman Walters considered and gave weight to the opinions and recommendations of leadmen with respect to the work of men under them, and Lundberg's opinions were solicited by his superiors.

It is evident from the foregoing facts that lead employees in fact exercised such authority as to

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raises for some. It is evident that Lundberg's opinion must have carried some weight, since it was solicited. The undersigned so finds.

effect changes in the status of employees, or effectively recommended such action. The undersigned therefore finds that the lead employees were, at all times material herein, supervisory employees. In addition, the undersigned finds that, irrespective of the supervisory status of lead employees, the other employees were justified in inferring, and did in fact infer, that the leadmen represented and spoke for the management, and that, for that reason also, their activities are attributable to the respondent.

Schwartfeger, Pfleger, and Stegner

Counsel for the Board contended that the activities of Loretta Schwartfeger, Leo Pfleger, and Otto Stegner are attributable to the respondent.

Loretta Schwartfeger was employed by respondent on March 16, 1942. After working for 5 weeks on the burr bench she was transferred to inspection on the night shift. On May 31, 1943, she became a confidential filing clerk. From a starting wage of 50 cents per hour, Schwartfeger's pay was increased by various stages to 95 cents. In the inspection department, Schwartfeger instructed 8 or 9 inspectors, secured blue prints and gauges for them, and checked their work. At times she also did some inspecting. Assisting Schwartfeger was another girl whom Schwartfeger described as her "assistant." The assistant's work consisted of "helping the girls, getting their gauges," and giving them instructions. Later Schwartfeger was transferred to the day shift. There she had 20 girls, and another assistant. Schwartfeger collected dues for the Asso-



ciation during working hours. The undersigned finds that she performed the duties of a leadwoman.<sup>21</sup>

Leo Pflieger has been treasurer of the Association since 1941. From 1920 until 1940 he was a foreman in the machine shop. In the fall of 1940 he left the respondent's employ. On January 29, 1941, he returned as a toolmaker at \$1.15 per hour. He is presently engaged in a secret project in connection with the war. He shares an office with another employee, but spends most of his time in the plant. There are no employees under him. Since he returned to the respondent's employment, Pflieger's wages have been increased by various stages to \$1.55 an hour.

The undersigned finds no substantial evidence that at any time material herein, Pflieger's employment was such to warrant attributing his activities to the respondent.

Otto Stegner is vice president of the Association, and a member of its grievance committee. He signed the 1943 contract as a representative of the Association. He is classified as a "final inspector." His duties consist of the inspection of work as it comes from various parts of the plant, ascertaining from accompanying instructions what further proc-

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<sup>21</sup>The above findings are based on the testimony of Schwartfeger, who was called as a witness by the Board. She testified that she did not know whether she was a leadwoman, and that when employees asked her whether she was she informed them that she did not know. Her pay roll record classifies her as "inspection" during the time in question.

essing the parts require, and dispatching them to the appropriate departments or outside contractor. Schumer, inspection "foreman," is Stegner's immediate superior. Two employees, Hazel Smith and Ben Houtz, work with Stegner. Smith verifies job and part numbers. Stegner gives her most of her instructions. Houtz is under Al Dion, who is in charge of maintenance on Stegner's floor. Houtz's job is to move heavy articles for Stegner at the latter's direction, as well as to do moving for various other persons on the floor.

The undersigned finds that there is no substantial evidence to warrant attributing Stegner's activity to the respondent.

#### Conclusions as to domination and support

Through Semple, the respondent provided the facilities for the organization of the Association. Later, when the Association needed funds, the respondent supplied a treasury by assigning it the proceeds of the vending machines. In 1938, the picnic sponsored by the Association was actually financed by the respondent. Thus, at critical stages in the Association's development, the respondent assisted in bringing it into existence, assured its continued existence by providing funds for its administration, and enhanced its prestige among the employees.

Notwithstanding that, in the settlement agreement of 1941, the respondent agreed that it would not dominate or interfere with the administration of the Association, it nevertheless continued to permit the maintenance of vending machines in the

plant, and even performed the function of fiscal agent for the Association. It is to be noted that from July 1941, to March 1943, the vending machines provided 40 percent of the Associations' income.<sup>22</sup>

Moreover, implicit in the settlement agreement was the understanding that the participation of leadmen in the affairs of labor organizations was to be confined to membership, and that the respondent would take effective steps to prevent their assuming prominent roles therein. Nevertheless, thereafter Leadlady Goebel actively solicited the employees under her to join the Association, and told them that they were expected to attend Association meetings. Goebel's approach was such that some employees concluded that membership in the Association, and attendance at meetings, were compulsory. Leadman Lundberg assisted in the collection of dues; Clark was on the Association grievance committee, Bleuel, a member of the negotiating committee, Scheid, the committee on vending ma-

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<sup>22</sup>The undersigned does not regard as significant the fact that the settlement contained no agreement by the respondent that it would cease contributing support to the Association. If the contribution of sums from the vending machines is deemed to have been outside the scope of the agreement, the settlement did not litigate the issue. If, however, the matter was within the scope of the settlement, the respondent's action, in continuing the arrangement, constituted a persistence in unfair labor practices which the respondent warranted by the settlement that it would not resume. Cf *Corn Products Refining Company*, 48 N.L.R.B. 193.

chines; Schwartfeger collected dues; and Johnson became president. But the respondent took no remedial action. The employees were justified in inferring that the respondent's passive attitude implied approval of the lead employees' conduct.<sup>23</sup>

In order to further the policies and the administration of the Act, the Board will ordinarily give effect to settlement agreements respecting unfair labor practice charges, and will not consider evidence of unfair practices antedating the settlement and contemplated therein.<sup>24</sup> Any such agreement, however, necessarily contemplates that the respondent will not thereafter engage in the unfair labor practices which were the subject of the settlement. Where such practices are resumed, effectuation of the policies of the Act requires that the Board not be precluded from giving consideration to events occurring prior to the settlement.<sup>25</sup> The fact that the Association participated in the 1937 election and

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<sup>23</sup>That the leadmen were fully aware of the impropriety of their leading activity in the Association is evident from Lundberg's testimony. He resigned as president of the Association when he became a leadman. In addition, Richardson testified, without denial from Johnson, that early in January Johnson said to her, "I am going to have to resign as president [of the Association] or go back to operating a machine because I shouldn't be holding an office in a company union and holding a position as foreman." Richardson's testimony is credited.

<sup>24</sup>*Godchaux Sugars, Inc.*, 12 N.L.R.B. 568.

<sup>25</sup>*Picker X-Ray Corporation*, 12 N.L.R.B. 1384, 1935.



was thereafter certified by the Regional Director is not a defense to the present charges. Unfair labor practices were neither in issue nor litigated in that proceeding.<sup>26</sup>

After the settlement agreement the respondent continued its arrangement with the Association with respect to vending machine income; permitted lead employees to take prominent part in the administrative and promotional activities of the Association and to be members of its committees; permitted open and widespread membership solicitation and dues collection in the plant during working hours; arranged its operating schedule to accomodate Association meetings; and encouraged employees to attend those meetings. Thereafter, with knowledge of the fact that the I.A.M. claimed to represent its employees, the respondent entered into a new contract with the Association without adequate proof that the Association represented a majority.

Upon the whole record, the undersigned finds that the respondent has dominated and interfered with the formation and administration of the Association and contributed support thereto, and that it thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. It is further found that the respondent's contract of May 1, 1943, with the Association, is an agreement made with an organization not freely chosen by the employees of the

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<sup>26</sup>Hicks Body Company, 33 N.L.R.B. 858, 877; Picker X-Ray Corporation, *supra*.

respondent as their representative for the purposes of collective bargaining, and constitutes an illegal interference with the rights guaranteed employees in Section 7 of the Act.

In the undersigned's opinion, the respondent's favor and support, have so permeated the affairs of the organization as to prevent its functioning as an independent bargaining agent. Until the momentum supplied to the Association by the respondent's contributions, approval, and encouragement, has been dissipated, the employees will be deprived of the truly independent and uninfluenced representation which the Act demands. When the respondent's influence has been dispelled, the employees will be free to determine for themselves the representation they genuinely desire.

#### B. The alleged discriminatory discharges

On February 22, 1943, without advance notice, the respondent abolished the night shift in the burr and rework department, consisting of some 20 employees, including Goebel. The complaint alleged that the respondent thereby discharged Bess Allison, Anna Cox, Myrtice DeShazo, Mary Elsenius, Daisy Mix, Ella Richardson, Mary Sharman, and Alice Taylor because of their membership in and activities on behalf of the I.A.M., and has since failed and refused to reinstate them.

Of these eight, all but Cox signed I.A.M. bargaining authorization cards.<sup>27</sup> As to Allison, Shar-

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<sup>27</sup>Cox was asked on the night of February 22 to join the I.A.M. She promised that she would join on the next day.



man, and Mix, counsel for the Board stipulated that the respondent had no knowledge of any union membership or activity by them until the hearing. Of the remaining four, Richardson wore an I.A.M. button in the plant, and DeShazo passed out I.A.M. cards.<sup>28</sup> Cox, Elsenius, DeShazo, Richardson, and Taylor were solicited by Goebel to join the Association. All but Cox joined. About the middle of February DeShazo told Goebel that she did not intend to pay dues in the Association any longer. There is no evidence as to the union affiliation or activity of the other persons on the burr bench. The lay-offs occurred at the peak of the I.A.M.'s organizational drive. The I.A.M. was most active on the machine shop night shift, where the majority of the employees wore I.A.M. buttons. Of the burr bench employees, however, only Richardson wore a button.

As has been indicated heretofore, the burr bench employees were frequently assigned to machine operation when, for absenteeism or other reasons, extra help was needed on the machines.

About February 12, Walters had a conversation with President Gilfillan, during which Gilfillan said that it might be necessary to run a somewhat smaller night shift. Gilfillan also asked Walters whether he had seen any "A. F. of L." buttons displayed in the plant. When Walters answered that

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<sup>28</sup>Richardson, however, had a "heated" conversation with Roy Johnson about February 18, after Richardson began to wear her I.A.M. button. Richardson testified that Johnson attempted to "convert" her.

he had paid no attention, Gilfillan said that if it was necessary to have a union to win the war, he was willing to have one.<sup>29</sup>

On the evening of February 22, 1943, Cramer informed Walters that the burr and rework night shift was to be discontinued, and that certain of those employees were to be laid off. Walters asked Cramer if Richardson was among them. Cramer replied that the lay-offs would be in accordance with seniority. When Walters suggested that Richardson was a good worker, Cramer answered that "that was the set-up." He then turned over to Walters the employees' pay checks and availability slips. Six of the employees, those having the greatest seniority, were transferred to the day shift, some to the burr bench, some to inspection.<sup>30</sup> Walters told the remainder that they were being laid off. When Richardson asked the reason, Walters told her "because of shortage of work and in accordance with seniority," and stated that they would be called back when work picked up. Richardson replied that that was not the reason, and pointed to her union button.

During the latter weeks of their employment, Richardson, Taylor, Cox, and Elsenius, had been assigned to machine operation for substantial periods.

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<sup>29</sup>These findings are based on Walters' uncontradicted testimony, which is credited.

<sup>30</sup>The Association contract provided for the allocation of work according to seniority.

The last 8 days of Elsenius' employment, and the last 6 of Taylor's were spent wholly on the drill presses. Ricardson worked on the burr bench only  $12\frac{3}{4}$  hours from February 4 to February 22. The remainder of that period she was on the milling machines and the drill presses.

The respondent contended that the shift was abolished because of a lack of work. The shift has never been resumed. Vice-President Sparks, former General Foreman Hoenes, and Superintendent Cramer, testified that in February the amount of work available for the machine shop fell off due to lack of materials.<sup>31</sup> The burr bench was selected for the cut, according to Sparks, because it was made up of inexperienced women employees. Sparks made the decision to abolish the shift; Cramer determined which of the employees should be transferred.

The respondent's work records disclose that peak employment was reached about the middle of December, 1942. From an index of 100 at that time, it dropped to 90.4 during the week ending February 27, 1943. From that point it declined to a low of 80.4 on March 27. Thereafter, it climbed to 86.1

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<sup>31</sup>Hoenes testified that he informed Sparks several times that work was extremely slack in the drill press and burr department, and that he had "a dickens of a time to keep people busy." while on the mills, automatics, and turret lathes there was ample help; and that the burr department was "overloaded" with employees. Cramer testified that there was a shortage of materials prior to February 22, and that he discussed with Sparks the cutting down of the force.

on May 22, dropped to 84.3 on June 12, and then rose to 90.7 on June 19.<sup>32</sup> Nine additional employees who were classified as of the burr department had their employment terminated between February 23 and February 27.<sup>33</sup>

Lucille Macbeth, assistant head of the personnel department, testified that as employment became available she attempted to contact by telephone the employees who were laid off on February 22; that

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<sup>32</sup>The testimony of Sparks, Hoenes and Walters indicates that the total amount of rework available has now fallen off because of a change in production policy, whereby defective work is now largely returned to the department from which it originated, instead of being repaired in the rework department, as was formerly the case. There is also credible testimony that the total amount of burr work available has also fallen off due to several factors: (1) performance of that work by outside contractors supplying finished parts to the respondent; and (2) a new process for burring has been developed which, to a large extent, eliminates the necessity for manual work. These factors do not appear, however, to have become substantial by February 22.

<sup>33</sup>A breakdown of the respondent's records reveal the following terminations and hirings in the burr department after February 22:

Terminations			
February	27—9	April	17—2
March	6—1	April	24—1
March	20—2	May	1—1
April	10—1	May	8—2
Hirings			
March	13—2	April	24—1
March	20—2	May	1—2
March	27—1	May	8—1



some had no phones, and those she made no further effort to contact; that some had secured other employment; and that others she was unable to reach personally, but left word that there were jobs available. Macbeth's recollection was that she began to call these employees early in April. Sometime in June, Anna Cox received a call from the respondent informing her that there was a job available for her.<sup>34</sup> Elsenius was called by Macbeth on May 31 and asked if she wanted a job. She replied that she was working. Allison returned to the plant 2 or 3 days after the lay-off and asked for work. She was told that she would be called when there was a job available. Approximately 2 weeks later, Macbeth called Allison and offered her a job on the day shift doing inspection work. Allison declined the day job and asked to be put on nights. Some time thereafter, Macbeth again called Allison and offered her a job on the night shift. Allison returned to work on May 14. About 2 weeks after the lay-off, Emma Ulrich, who was one of those laid off, applied for work, and was told that there was no opening. She returned again about a week later and was then put to work on the burr bench on the day shift. Richardson and DeShazo testified that they had not been informed of any telephone calls from the respondent.

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<sup>34</sup>Cox called at the plant in response to the notice and told Personnel Manager Nevins that she would require steady work because her husband was an invalid. Nevins replied that he could not guarantee the duration of the employment.

The contention of the Board was that the respondent abolished the entire night burr and rework shift in order to discourage union activity. However, the respondent's position that during January and February there was a shortage of materials, and a consequent reduction in the amount of work available, is supported by the evidence that during the early part of 1943, employment did fall off. If the respondent was intent on discouraging union activity, it is not evident why it should have selected the burr and rework employees for discriminatory treatment. Other than Richardson, no employee in the department *worn* an I.A.M. button, and only DeShazo engaged in any overt union activity; whereas, among the night shift as a whole, the majority of the employees wore I.A.M. buttons. The Board's contention is therefore reduced to the proposition that the employees were discharged without regard to the union membership or activity of the group, or of the individual employees involved, in order to discourage such activity generally. The undersigned does not find that proposition persuasive. Were that the respondent's motive, it seems probable that all the employees on the shift would have been laid off. Instead, one third of them were transferred. Since the transferees were the senior employees, and since except for Richardson and DeShazo, evidence of open union activity among the whole group is totally absent, there is no basis for concluding that the retention of the transferees constituted a discriminatory selection. Similar considerations weigh



against the inference that the respondent might have seized upon the falling off of work as a pretext for wholesale and unnecessary discharges. The testimony of Sparks, Cramer, and Hoenes, with respect to the reasons for the lay-offs, is therefore credited.<sup>35</sup>

During the period from February 23 to May 14, 19 more persons were laid off in the burr department, while 9 were hired. Five of the latter 9 (including Ulrich) were hired during March, and before Macbeth began, according to her testimony, to recall those who had been laid off. Twelve of the 19 separations also occurred during that period. No explanation was offered by the respondent as to why the laid-off employees were not offered the 4 vacancies. Ordinarily, that fact might suggest that the failure to recall was discriminatory. How-

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<sup>35</sup>Leadman Nelson left the respondent's employ March 6—11 days after the lay-offs. He had frequently borrowed Taylor and Elsenius for work on the drill presses. He testified that after February 22, he had "quite a bit to do", could have used the girls, and asked Cramer for additional help; and that about a week later Cramer gave him three experienced employees. Nelson's testimony is not necessarily inconsistent with the respondent's. Since a number of the burr employees were used at times on the machines, it is understandable that some temporary dislocation might result from their lay-offs. That Nelson's shorthandedness was such a temporary condition is evident from (1) Walter's testimony that on the drill presses at the present time "we have just a few fellows working"; (2) the lead position left vacant by Nelson has not been filled.

ever, during the same period, Ulrich and Allison, the only 2 who returned and asked for reemployment, had been offered it. The undersigned views the failure to recall any of the laid-off group during March as negating the probability that discrimination was being practiced against those whose union affiliations the respondent may be presumed to have known, namely Richardson and DeShazo. The offers of re-employment to Ulrich and Allison negate the inference that the failure to recall during March was a mass discrimination. For these reasons, and because of the absence of evidence of substantial union activity among the group as a whole, the undersigned is not persuaded that the failure to recall was discriminatory.

The undersigned therefore concludes and finds that there is no substantial evidence to support the allegation that the lay-offs of February 22 were intended to discourage union activity, or that the respondent has failed and refused to reinstate any of the employees. It will be recommended that that allegation be dismissed.

There is no evidence to support the allegations of the complaint that the respondent made derogatory and uncomplimentary statements to employees regarding the I.A.M.; or referred to members and officials of the I.A.M. as racketeers and undesirable foreigners; and no substantial evidence to support the allegations that the respondent stated to employees that union membership would not serve to better their wages or conditions of employment, but would in fact render such conditions less favor-

able; threatened to cancel smoking and other privileges and to reduce or eliminate overtime work; or denied the use of company bulletin boards to the I.A.M. while permitting their use by the Association. The undersigned will recommend that those allegations also be dismissed.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent has dominated and interfered with the formation and administration of, and has contributed support to, the Association. The effect and consequences of the respondent's domination of, interference with, and support of the Association, as well as the continuing recognition of the Association as the bargaining representative of its employees, constitute

a continuing obstacle to the free exercise by the respondent's employees of the rights guaranteed to them in the Act. Because of the respondent's illegal conduct with regard to the Association, that organization is incapable of serving the respondent's employees as a genuine collective bargaining agency. Accordingly, the undersigned will recommend that the respondent disestablish and withdraw all recognition from the Association as representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment. The contract effective May 1, 1943, between the respondent and the Association, embodies recognition of that organization as exclusive bargaining representative of the respondent's employees. Since such contract represents the fruit of the respondent's unfair labor practices, the undersigned will recommend that the respondent cease giving effect to it or to any other existing contract between it and the Association or to any modification or extension thereof. Nothing in these recommendations, however, shall be construed as requiring the respondent to vary its wage, hour, and other substantive features of its relations with its employees which the respondent may have established in conformity with such contracts, as extended, renewed, modified, supplemented or superseded.

Upon the basis of the foregoing findings of fact

and upon the entire record in the case, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. International Association of Machinists, District Lodges No. 94 and 311, and Gilfillan Employees Mutual Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Gilfillan Employees Mutual Association, and contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

### RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Gilfillan Bros., Inc., its officers, agents, successors and assigns shall:



1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Gilfillan Employees Mutual Association, or with the formation or administration of any other labor organization of its employees, and from contributing support thereto;

(b) Recognizing Gilfillan Employees Mutual Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to the contract of May 1, 1943, with Gilfillan Employees Mutual Association, or to any modification, extension, or renewal thereof;

(d) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Gilfillan Employees Mutual Association, and completely disestablish that organization as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning griev-



ances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(b) Post immediately in conspicuous places in its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), and (d) hereof; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) hereof;

(c) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent: violated Section 8 (3) of the Act; made derogatory and uncomplimentary statements to employees regarding the I.A.M.; referred to members and officials of the I.A.M. as racketeers and undesirable foreigners; stated to employees that union membership would not serve to better their wages or conditions of employment, but would in fact render such conditions less favorable; threatened to cancel smoking and other privileges and to reduce or eliminate overtime work; or denied the use of company bulletin boards to the I.A.M. while permitting their use by the Association.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

CHARLES W. SCHNEIDER,

Trial Examiner.

Dated: September 11, 1943.

United States of America  
Before the National Labor Relations Board

Case No. 21-C-2281

In the Matter of

GILFILLAN BROS., INC., a corporation,

and

INTERNATIONAL ASSOCIATION OF MA-  
CHINISTS DISTRICT LODGE #94, for and  
on behalf of LODGE #311\*

EXCEPTIONS OF GILFILLAN BROS., INC.

Gilfillan Bros., Inc., a corporation (herein called "respondent"), hereby except to the Intermediate Report dated September 11, 1943, of Charles W. Schneider, Trial Examiner, in the above-entitled matter, and to the record and proceedings taken in the above-entitled matter in the following particulars:

1. To the finding of the Intermediate Report, which is as follows:

"Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties."

in that the record shows without conflict that this respondent was denied the right to inspect and/or produce as evidence herein the files of the National

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\*Herein referred to as "I.A.M."

Labor Relations Board relative to the charges filed against this respondent by the C.I.O., United Electrical and Radio Workers of America, but was only permitted to examine and introduce into evidence those portions of that file which, in the judgment of the Examiner, were relevant and material. Respondent is unable to designate the matter contained in said file which was not introduced into evidence by reason of the fact that it was refused the right to subpoena said file, or to inspect the contents thereof, and in that respondent was refused a subpoena to require the attendance at the hearing as a witness of Harry Lee (Lea), the business representative of the International Association of Machinists, Lodge #94, and refused the opportunity through said Harry Lee to prove that the National Labor Relations Board had prejudged the charges of said Lodge 94 of the International Association of Machinists filed against this respondent.

2. To the ruling of the Trial Examiner by which he refused the demand made by this respondent in the manner required by the regulations of the National Labor Relations Board that the Board produce and permit respondent to examine the file 21-R-111, and to refuse to request the National Labor Relations Board to produce, and permit respondent to examine the books, records, correspondence, and documents relative to the respondent in Case No. 21-R-111.

3. To the ruling of the Trial Examiner refusing this respondent a subpoena requiring the attendance, as a witness, of said Harry Lee (Lea).

4. To the ruling of the Trial Examiner denying the motion of this respondent to dismiss this proceeding, insofar as this proceeding in any wise *effected* the contract or contractual relationship existing between this respondent and the Association.

5. To the finding set forth in the Intermediate Report that

“Subsequently the Association held its first meeting in respondent’s plant.”

in that said finding is contrary to, and not supported by, the evidence.

6. To the finding set forth in the Intermediate Report under the heading “Conclusions as to domination and support”, which is as follows:

“Through Semple, the respondent provided the facilities for the organization of the Association. Later, when the Association needed funds, the respondent supplied a treasury by assigning it the proceeds of the vending machines. In 1938, the picnic sponsored by the Association was actually financed by the respondent. Thus, at critical stages in the Association’s development, the respondent assisted in bringing it into existence, assured its continued existence by providing funds for its administration, and enhanced its prestige among the employees.”

in that said finding or conclusion is not supported by, and is contrary to, the evidence, and in that said finding is, as to matters which were concluded by the



settlement of the charges filed against this respondent by the I.A.M. in the year 1941.

7. To the finding set forth in the Intermediate Report, which is as follows:

“Within a short time after the organization of the Association, the respondent began to contribute to the Association the proceeds of the various vending machines located in the plant. This income had previously been divided between the respondent and the owner of the machines. Thereafter, the respondent continued to receive the proceeds but made periodic remittances thereof to the Association. That arrangement has continued down to the present time.”

in that said finding is contrary to and not supported by the evidence, and in that said finding is as to a matter concluded by the settlement agreement of the charges filed by the I.A.M. against this respondent in the year 1941.

8. To the finding set forth in the Intermediate Report, which is as follows:

“In 1938 the Association asked and received permission to become the sponsor of the picnic for that year. The Association's name appeared on the publicity advertising the picnic. It was unable, however, to finance the affair adequately. Semple thereupon asked President Gilfillan to underwrite whatever deficit the Association incurred, in order that the standard set by the picnic of 1937 could be maintained. Gilfillan



agreed. The respondent's vice president, Sparks, induced various merchants to donate prizes. All employees and their families and friends were invited to attend. The respondent subsequently liquidated a deficit of from \$100 to \$200 incurred by the Association in sponsoring the picnic."

in that said findings are contrary to, and not supported by, the evidence, and are as to matters concluded by the settlement of the charges filed by the I.A.M. against this respondent in 1941.

9. Respondent excepts to the failure of the Trial Examiner to find, in accordance with the undisputed evidence, that the notice (respondent's Exhibit 10) remain posted upon the bulletin board of the respondent from on or about November 12, 1941, to the 15th day of April, 1942, and the failure of the Trial Examiner to find that by the posting and keeping posted of said notice, the respondent notified its foremen and leadmen in accordance with its agreement with the Regional Director of the Board of the matters set forth in said agreement and notice.

10. To the finding set forth in the Intermediate Report, which is as follows:

"About March 6, the officers of the Association met with S. W. Gilfillan, president of the respondent, in the latter's office, to discuss the renewal of the 1942 contract between the Association and the respondent. According to the testimony of Otto Stegner, Vice-President of the Association, Gilfillan asked how the Association

was functioning, and whether it was in 'good order'; and stated that if it was not, it should 'get on its toes' and 'combat' the election which the I.A.M. was demanding."

in that said finding is not sustained by, and is contrary to, the evidence.

11. To the finding set forth in the Intermediate Report, which is as follows:

"On April 12, the I.A.M. sent the respondent a letter stating, inter alia, that because of the unfair labor practice charges, the I.A.M. had 'temporarily and without prejudice' withdrawn its petition for certification; but that the I.A.M. was the representative of the respondent's employees, and that any further collective bargaining between the Company and the Association would be 'without legal force and effect' and would be 'protested' by the I.A.M."

in that said finding does not also contain the statement set forth in said letter of April 12, as follows:

"That the 'Employee's Mutual Association' is not, in fact or in the view of the Board, the agent of the employees. And therefore, that collective bargaining between the Company and the Employees' Mutual Association would be without legal force and effect."

12. To the failure of the Trial Examiner to find that the contract entered into between respondent and the Employees' Mutual Association in May of 1943 was, and by its terms expressed to be, a con-

tinuation of the contractual relation theretofore existing between the parties.

13. To the finding of the Intermediate Report, which is as follows:

“On the other hand when General Foreman Walters apprehended an employee soliciting for the I.A.M. in the washroom, he told the employee that ‘that was one A. F. of L. rule—that they were specifically told not to (violate).’”

in that said finding is not sustained by, and is contrary to, the evidence, and in that it would appear from said finding that the respondent had instructed its foremen to tell the employees not to violate any A. F. of L. rule, whereas the evidence established and the Trial Examiner failed to find that General Foreman Walters merely stated to the employees it was his understanding that such was an A. F. of L. rule.

14. To the failure of the Trial Examiner to find, in accordance with the evidence, that General Foreman Walters, upon hearing an employee soliciting for the I.A.M., did nothing about it, and failure to find, in accordance with the uncontradicted evidence, that the International Association of Machinists maintain in the plant of the respondent and without hinderance from the respondent, a shop steward designated by a badge as such, and that said shop steward, upon the company's premises, solicited and obtained more than one hundred authorization cards or applications for membership in the I.A.M. without interference or hindrance by respondent, and that the applications obtained by him were in excess

of two-thirds of the total number of authorization cards or membership applications obtained by the I.A.M. in its organization drive.

15. To the failure of the Trial Examiner to find, in accordance with the undisputed evidence, that union meetings were necessarily held during working hours, due to the fact that the plant of respondent was in operation twenty-four hours per day.

16. Respondent excepts to the failure of the Trial Examiner to find that the I.A.M. was afforded equal opportunity to solicit membership in the I.A.M. and the failure to find that memberships in the I.A.M. or A. F. of L. were actually solicited by employees on company time, as shown by the uncontradicted evidence in the record.

17. To the finding of the Intermediate Report, which is as follows:

“Superintendent Cramer, when asked by Leadman George Nelson whether the employees should be allowed to attend the Association meeting of January 4, was told by Cramer that they would shut down. When Nelson asked if that was necessary, Cramer answered that it was, that ‘as an official of the Company,’ he could not say anything, but that the employees should all go to the meeting in a body; that they might get a raise out of it and keep some other union from coming in.”

in that said finding is not sustained by, and is contrary to, the evidence.

18. To the finding of the Intermediate Report, which is as follows:

“Leadlady Goebel told employees that they were expected to go to Association meetings.”

in that said finding is not supported by, and is contrary to, the evidence.

19. Respondent excepts to the failure of the Trial Examiner to find, in accordance with the evidence, that the employees who, it is alleged, were told by leadlady Goebel that they were expected to go to Association meetings, knew that attendance was not compulsory and attended but one meeting, and during their employment ceased to pay dues to the Association, and either joined the I.A.M. or authorized it as their bargaining agent.

20. Respondent excepts to the finding of the Trial Examiner, which is as follows:

“Goebel’s approach was such that some employees concluded that membership in the Association, and attendance at meetings, were compulsory.”

upon the ground that said finding was contrary to and not supported by the evidence.

21. To the finding of the Intermediate Report, which is as follows:

“Foreman Brussow, a supervisory employee with authority to discharge, collected Association dues.”

in that said finding is contrary to, and is not supported by the evidence.

22. To the finding of the Intermediate Report, which is as follows:



“The following persons took part in Association activity while occupying the positions of lead employees: \* \* \* James Clark, former night milling machine leadman, who was elected to the Association grievance committee in January or February 1943.”

in that said finding is not supported by, and is contrary to, the evidence.

23. To the failure of the Trial Examiner to find, in accordance with the undisputed evidence, that James Clark did not accept appointment upon the grievance committee of the Association, and did not act thereon.

24. To the failure of the Trial Examiner to find in the Intermediate Report, as shown by the uncontradicted evidence, that the I.A.M. was at all times permitted to use the bulletin boards on the respondent's premises, did in fact use said bulletin boards by posting notices on said board, and more particularly the notice of the A. F. of L. Machinists Lodge #311 meeting for Gilfillan employees at the Woodman Hall, Wednesday, February 17, as shown in respondent's Exhibit 1.

25. To the failure of the Trial Examiner to find that the leadmen and leadladies were not supervisory employees, as established by the evidence, and to further find that any activities on the part of leadmen on behalf of the Association are activities in their capacity as members of the Association, and not as representatives of management.

26. To the finding of the Intermediate Report, which is as follows:



“The following persons took part in Association activity while occupying the positions of lead employees: \* \* \* Oswald Lundberg, day milling machine leadman, and a former president of the Association, to whom Bucknell regularly turned over, for transmission to Pfleger, Association dues which Bucknell had collected.”

in that said finding is contrary to, and not sustained by, the evidence, in that Trial Examiner failed to also find, as shown by the uncontradicted evidence, that Oswald Lundberg was not president of the Association and did not take part in Association activity during any of the time he was employed as a leadman.

27. To the findings of the Intermediate Report, which are as follows:

“There are no leadmen on the shift”; and

“Except on the automatic screw machines, the leadman normally does no production work.”

in that said findings are not sustained by, and are contrary to, the evidence.

28. To the finding of the Intermediate Report, which is as follows:

“However, General Foreman Walters relied on his leadmen to ascertain the facts respecting an employee’s standard of performance; consulted with them respecting decisions, allowed them ‘a good bit to say,’ and gave weight to their opinions.”

in that said finding is not sustained by, and is contrary to, the evidence.

29. To the finding of the Intermediate Report, which is as follows:

“In the burr department, under Leadlady Goebel, there were from 15 to 20 girls, mainly inexperienced, to whom Goebel assigned work and gave instructions. Goebel frequently selected employees from this group to do machine work when the machine leadmen requested extra help. However, when she could not spare the girls, Goebel would refuse to permit their transfer, unless ordered to do so by the foreman.”

in that said finding is not supported by, and is contrary to, the evidence, in that there is no evidence that Goebel at any time refused to permit the transfer of any employee unless ordered to do so by a foreman.

30. Respondent excepts to the finding of the Trial Examiner, which is as follows:

“Other factors, also, suggest the identification of leadmen with management in the eyes of the employees, the respondent, and the Association.”

in that said finding is not supported by, and is contrary to, the evidence.

31. Respondent excepts to the finding of the Trial Examiner, which is as follows:

“The agreement obviously constituted a recognition that the status of leadmen was such that prominent union activity by them was inconsistent with respondent's duty to maintain

neutrality in the matter of employee organization. The posting of the settlement agreement served notice of that fact on the employees.”

in that said finding is not supported by, and is contrary to, the evidence.

32. To the finding of the Intermediate Report, which is as follows:

“It is evident from the foregoing facts that lead employees in fact exercised such authority as to effect changes in the status of employees, or effectively recommended such action. The undersigned therefore finds that the lead employees were, at all times material herein, supervisory employees.”

in that said finding is not sustained by, and is contrary to, the evidence.

33. To the finding of the Intermediate Report, which is as follows:

“In addition, the undersigned finds that, irrespective of the supervisory status of lead employees, the other employees were justified in inferring, and did in fact infer, that the leadmen represented and spoke for the management, and that, for that reason also, their activities are attributable to the respondent.”

in that said finding is not sustained by, and is contrary to, the evidence.

34. Respondent excepts to the finding of the Trial Examiner, which is as follows:

“Leadman Lundberg assisted in the collection of dues;”

on the ground that said finding is contrary to, and not supported by, the evidence.

35. To the finding of the Intermediate Report, which is as follows:

“But the respondent took no remedial action. The employees were justified in inferring that the respondent’s passive attitude implied approval of the lead employees’ conduct.”

in that said finding is not sustained by, and is contrary to, the evidence.

36. To the finding set forth in the Intermediate Report, which is as follows:

“After the settlement agreement the respondent \* \* \* permitted lead employees to take prominent part i n the administrative and promotional activities of the Association and to be members of its committees; permitted open and widespread membership solicitation and dues collection in the plant during working hours; arranged its operating schedule to accomodate Association meetings; and encouraged employees to attend those meetings. Thereafter, with knowledge of the fact that the I.A.M. claimed to represent its employees, the respondent entered into a new contract with the Association without adequate proof that the Association represented a majority.”

in that said finding is not sustained by, and is contrary to, the evidence.

37. To the finding set forth in the Intermediate Report, as follows:

“Upon the whole record, the undersigned finds that the respondent has dominated and interfered with the formation and administration of the Association and contributed support thereto, and that it thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.”

in that said finding is not supported by, and is contrary to, the evidence.

39. To the finding set forth in the Intermediate Report, which is as follows:

“It is further found that respondent’s contract of May 1, 1943, with the Association, is an agreement made with an organization not freely chosen by the employees of the respondent as their representative for the purposes of collective bargaining, and constitutes an illegal interference with the rights guaranteed employees in Section 7 of the Act.”

in that said finding is not supported by, and is contrary to, the evidence.

39. To the finding set forth in the Intermediate Report, which is as follows:

“In the undersigned’s (Trial Examiner’s) opinion, the respondent’s favor and support, have so permeated the affairs of the organization as to prevent its functioning as an independent bargaining agent. Until the momentum supplied to the Association by the respondent’s contributions, approval, and encouragement,



has been dissipated, the employees will be deprived of the truly independent and uninfluenced representation which the Act demands. When the respondent's influence has been dispelled the employees will be free to determine for themselves the representation they genuinely desire."

in that said finding is not sustained by, and is contrary to, the evidence.

40. Respondent excepts to the finding of the Trial Examiner that the leadmen employed by respondent or supervisory employee, have acted for or on behalf of the management, and to the finding of the Trial Examiner that the acts of the respondent were such as to lead the employees to believe that the leadmen acted for or on behalf of management, on the grounds that said findings, and each of them, is contrary to, and not supported by, the evidence.

41. To the finding set forth in the Intermediate Report, which is as follows:

"The undersigned has found that the respondent has dominated and interfered with the formation and administration of, and has contributed support to, the Association."

in that said finding is not sustained by, and is contrary to, the evidence.

42. To the finding set forth in the Intermediate Report, which is as follows:

"The effect and consequence of the respondent's domination of, interference with, and sup-



port of the Association, as well as the continuing recognition of the Association as the bargaining representative of its employees, constitute a continuing obstacle to the free exercise by the respondent's employees of the rights guaranteed to them in the Act."

in that said finding is not sustained by, and is contrary to, the evidence.

43. To the finding set forth in the Intermediate Report, which is as follows:

"Because of respondent's illegal conduct with regard to the Association, that organization is incapable of serving respondent's employees as a genuine collective bargaining agency."

in that said finding is not sustained by, and is contrary to, the evidence.

44. To the finding set forth in the Intermediate Report, which is as follows:

"Accordingly, the undersigned will recommend that the respondent disestablish and withdraw all recognition from the Association as representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment."

in that said finding is not sustained by, and is contrary to, the evidence.

45. To the finding set forth in the Intermediate Report, which is as follows:

“Since such contract (May 1, 1943) represents the fruit of the respondent’s unfair labor practices, the undersigned will recommend that the respondent cease giving effect to it or to any other existing contract between it and the Association or to any modification or extension thereof.”

in that said finding is not sustained by, and is contrary to, the evidence.

46. To the conclusion of law set forth in the Intermediate Report, which is as follows:

“By dominating and interfering with the formation and administration of Gilfillan Employees Mutual Association, and contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 9 (2) of the Act.”

in that said conclusion is not based upon or sustained by the evidence or the facts found by the Trial Examiner, and that said conclusion of law is contrary to the provisions of the National Labor Relations Act.

47. To the conclusion of law set forth in the Intermediate Report, which is as follows:

“By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.”

in that said conclusion is not based upon or sus-

tained by the evidence or the facts found by the the Trial Examiner, and that said conclusion of law is contrary to the provisions of the National Labor Relations Act.

48. To the ruling of the Trial Examiner overruling respondent's objection to the question appearing on page 332 of the transcript, as follows:

"Q. Will you tell us what your conversation with Mr. Clark was?"

upon the ground that the question was not material to any matter in issue, upon the further ground that the witness had stated that the conversation referred to in the question occurred after the witness ceased to be an employee of the respondent, upon the further ground that no foundation had been laid that Mr. Clark had any authority to act for the respondent, upon the further ground that it would be hearsay and no proper foundation laid.

49. To the ruling of the Trial Examiner overruling respondent's objection to the question appearing on page 337 of the transcript, as follows:

"Q. Will you relate that conversation?"

upon the ground that the question called for hearsay.

50. To the ruling of the Trial Examiner appearing on page 343 of the transcript, overruling the objection of the respondent to the questions propounded to the witness Ella Richardson relating to her conversation with one Roy Johnson, upon the ground that the question called for hearsay.

51. To the ruling of the Trial Examiner over-

ruling respondent's objection to the question appearing on page 793 of the transcript, as follows:

"Q. And calling your attention to the afternoon of that day, that is the evening of that meeting, will you tell me whether you had a discussion with Marjorie Goebel regarding the E.M.A.?"

"A. Yes, I walked over to the meeting with her.

"Q. All right. Now tell me what your conversation was with her at that time."

upon the ground that the question called for hearsay as to the respondent.

52. To the rulings of the Trial Examiner overruling respondent's motions to dismiss the complaint upon each and every ground set forth by respondent in its motions to dismiss the complaint, as found in the record, page 579 et seq.

53. Respondent excepts to the recommendation of the Trial Examiner that respondent:

"Cease and desist from: (a) In any manner dominating or interfering with the administration of Gilfillan Employees Mutual Association, or with the formation or administration of any other labor organization of its employees, and from contributing support thereto;"

upon the grounds: First, that it has not been proven that respondent has dominated or interfered with or supported Gilfillan Employees' Mutual Association, and second, that any action of respondent in connection with the formation or administration of any other labor organization than Gilfillan Employ-

ees' Mutual Association is not within the charge filed herein or the complaint, and is not a matter litigated in this proceeding.

54. Respondent excepts to the recommendations of the Trial Examiner that respondent:

“Cease and desist from: \* \* \* (b) Recognizing Gilfillan Employees Mutual Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment; (c) Giving effect to the contract of May 1, 1943, with Gilfillan Employees Mutual Association, or to any modification, extension, or renewal thereof;”

on the grounds that the evidence shows that Gilfillan Employees' Mutual Association is a lawful organization of the employees of respondent, that the evidence fails to show that respondent has been guilty of unfair labor practices relating to said Association, and that the evidence shows that a valid and existing contract exists, and has for more than one year prior to the filing of the charges herein, existed between the respondent and said Association, and upon the further ground that said recommendations are in violation of the provisions of the National Labor Relation Board Appropriation Act, 1944, Title IV, Act of July 12, 1943, Public Law 135, 78th Congress, First Session.

55. Respondent excepts to the recommendation of the Trial Examiner that respondent shall:

“Cease and desist from: \* \* \* (d) In any



other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, as guaranteed in Section 7 of the Act.”

upon the grounds that the evidence fails to show that the respondent has committed any of the acts set forth in said recommendation, or any of the acts which by said recommendation respondent is ordered to cease and desist from committing, or to show that respondent has violated any of the provisions of the National Labor Relations Act.

56. Respondent excepts to the recommendation of the Trial Examiner that respondent:

“Withdraw all recognition from Gilfillan Employees Mutual Association, and completely disestablish that organization as the representative of any of the respondent’s employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;”

on the grounds that the evidence fails to show that respondent has interfered with, dominated, or controlled Gilfillan Employees’ Mutual Association, or been guilty of any unfair labor practice and that the evidence shows that the contract between the respondent and said Association was entered into



more than three months prior to the filing of the charges or complaint herein.

57. Respondent excepts to the recommendation of the Trial Examiner that respondent:

“Post immediately in conspicuous places in its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), and (d) hereof; and (2) that the respondent will take the affirmative action set forth in paragraph 2(a) hereof;”

upon the ground that there is no substantial evidence to support any of the recommendations of the Trial Examiner referred to in the recommendation last hereinabove quoted.

58. Respondent excepts to the recommendation of the Trial Examiner that respondent:

“Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.”

in that said recommendation constitutes a purported order of the Trial Examiner to the respondent which is beyond the power or jurisdiction of the Trial Examiner to make.

59. Respondent excepts to the recommendation of the Trial Examiner, which is as follows:

“It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.”

upon the ground that said recommendation is beyond power of authority of the Trial Examiner, and would, if followed by the Board, deprive the respondent of the rights given to it by the National Labor Relations Board to file exceptions and briefs before that Board prior to the making of any order of the Board herein.

NOURSE & JONES

By PAUL NOURSE

Attorneys for Respondent,  
Gilfillan Bros., Inc.

#### AFFIDAVIT OF SERVICE BY MAIL

State of California

County of Los Angeles—ss.

Phyllis Payne, being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 1017 Rowan Bldg., Los Angeles #13, California; that on the 6th day of October, 1943, affiant served the within Exceptions of Gilfillan Bros., Inc., on: (1) National Labor Re-

lations Board, Twenty-first Region, Los Angeles, California, (2) International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge No. 311, A.F.L., and (3) Employees Mutual Association, by placing a true copy thereof in an envelope addressed to each of said parties as follows:

1. National Labor Relations Board, Twenty-first Region, 111 West 7th Street, Los Angeles, 14, California  
(Attention: Mr. E. J. Eagen, Regional Director)
2. International Association of Machinists, District Lodge No. 94, for and on behalf of Lodge No. 311, A.F.L. 7806 Lou Dillon, Los Angeles 1, California  
(Attention: Mrs. Myrtle M. Volz)
3. Employees Mutual Association c/o Philip L. Wilson, Jr, Esquire, 625 Citizens National Bank Bldg., Los Angeles, 13, California

and then by sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorneys for Respondent, by and for whom said service was made.

That there is delivery service by United States mail at the places so addressed, or there is a regular communication by mail between the place of mailing and the places so addressed.

PHYLLIS PAYNE

Subscribed and sworn to before me this 6th day of October, 1943.

MARGUERITE BAUER

Notary Public in and for the County of Los Angeles, State of California

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United States of America  
Before the National Labor Relations Board

Case No. 21-C-2281

In the Matter of

GILFILLAN BROS., INC, a corporation  
and

INTERNATIONAL ASSOCIATION OF MACHINISTS LODGE # 94, for and on behalf of LODGE #311.

### DECISION AND ORDER

On September 11, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding. He found that the respondent had not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8 (3) of the Act, but that the respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8 (1) and (2) of the Act, and he recommended that it cease and desist therefrom and take certain affirmative action, as set out in the copy of the Intermediate Report attached

hereto. Thereafter the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Neither the I.A.M. nor the Association filed exceptions or a brief.

Pursuant to notice and at the request of the respondent, a hearing was held before the Board at Washington, D. C., on October 28, 1943, for the purpose of oral argument. The respondent and the I. A.M. were represented by counsel and participated in the hearing.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner subject to the following clarifying statement.

While no single fact set forth in the Intermediate Report, considered alone, justifies the conclusion that the Association is a company-dominated labor organization, under all the circumstances taken together, including particularly the financial assistance given by the respondent to the Association, the activity of leadmen<sup>1</sup> in behalf of that organization, and the circumstances leading to and surrounding the execution of the 1943 contract, as set forth in the Intermediate Report, we are convinced and we find that the respondent dominated and interfered with the formation and administration of the Association and contributed support to it.

The respondent has moved to dismiss the case on

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<sup>1</sup>Including Margaret Goebel.



the ground that the National Labor Relations Board Appropriations Act, 1944,<sup>2</sup> precludes the Board from proceeding herein, since the complaint as amended seeks to set aside as illegal a contract between the respondent and the Association executed in May 1943.<sup>3</sup> In support of its contention, the respondent argues that the 1943 contract is an agreement which has been in existence for 3 months or longer without complaint being filed,<sup>4</sup> since that

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<sup>2</sup>Title IV, Act of July 12, 1943, P. L. 135, 78th Cong., 1st Sess. The Appropriations Act contains the following provisions:

“No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for 3 months or longer without complaint being filed. Provided, That, hereafter notice of such agreement shall have been posted in the plant affected for said period of 3 months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person.”

<sup>3</sup>The complaint was amended on July 7, 1943. While neither the charge nor the first amended charge filed herein on March 8 and May 5, 1943, respectively, directly attacked the validity of any contract, they included allegations of unfair labor practices with respect to the Association, within the meaning of Section 8 (2) of the Act.

<sup>4</sup>Under a ruling of the Comptroller General of the United States, B-35803, dated July 29, 1943, the provision in question limits the use of funds to those cases in which charges have been filed within 3 months of the execution of a labor agreement, but prescribes no limitation as to the time within which a complaint may be issued by the Board.

contract is a mere continuation of a contract between the same parties executed in April 1942. We find no merit in the respondent's contention. Although the 1943 contract recites on its face that the parties intended to continue in existence the 1942 contract, the 1943 contract is a negotiated new contract containing substantive provisions with respect to terms and conditions of employment not found in the pre-existing contract.<sup>5</sup> Under the circumstances we are of the opinion that the 3-month limitation period became operative on the date of the signing of the new contract. Thus, the 1943 contract has not been in existence for 3 months or longer without complaint being filed, within the meaning of the 1944 Appropriations Act.

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Gilfillan Bros., Inc., and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

- (a) In any manner dominating or interfering with the administration of Gilfillan Employees Mutual Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to Gilfillan Employees Mutual Association or to any other labor organization of its employees;

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<sup>5</sup>These include provisions relating to wages, grievances machinery, extra pay for holiday work, and vacations with pay.

(b) Recognizing Gilfillan Employees Mutual Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to the contract of May 1, 1943, with Gilfillan Employees Mutual Association, or to any modification, extension, or renewal thereof;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Gilfillan Employees Mutual Association, and completely disestablish that organization, as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(b) Post immediately in conspicuous places in its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and

desist in paragraph 1 (a), (b), (c) and (d) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2(a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

And It Is Further Ordered that the complaint as amended be, and it hereby is, dismissed insofar as to alleges that the respondent discriminated with respect to hire and tenure of employment, within the meaning of Section 8 (3) of the Act.

Signed at Washington, D. C., this 13 day of November, 1943.

HARRY A. MILLIS

Chairman

GERARD D. REILLY

Member

JOHN M. HOUSTON

Member

(Seal) National Labor Relations Board

[Printer's Note: Intermediate Report, attached here, is not reproduced, as it is the same as the Intermediate Report set out at pages 18 to 58 of this Printed Record.]

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## AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Phyllis M. Proctor, being first duly sworn, on oath saith that I am one of the employees of

the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of November, 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Report] to the following named persons, addressed to them at the following addresses:

69562

International Association of Machinists District Lodge No. 94, on behalf of Lodge 311, AFL

Att: Mr. Roscoe V. Ickes  
532 Maple Avenue  
Los Angeles, California

69563

Myrtle M. Volz and Bennie C. Dale  
7806 Lou Dillon  
Los Angeles 1, California

69564

Gilfillan Bros., Inc.  
1815 Venice Blvd.  
Los Angeles, California

69565

Nourse & Jones  
458 S. Spring Street  
Los Angeles 13, California

69566

Gilfillan Employees Mutual Association  
c/o Gilfillan Bros., Inc.  
1815 Venice Blvd.  
Los Angeles, California



69567

Philip L. Wilson, Esquire  
625 Citizens National Bank Bldg.  
Los Angeles 13, California

PHYLLIS M. PROCTOR

Subscribed and sworn to before me this 13th day  
of November 1943.

[Seal] KATHRYN B. HARRELL,  
Notary Public, D. C. My commission expires March  
1, 1947.

(Return Card Receipts for above Registered Mail  
attached.)

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In the United States Circuit Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

GILFILLAN BROS., INC.,  
Respondent.

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Chief  
of the Order Section, duly authorized by Section  
1 of Article VI, Rules and Regulations of the Na-  
tional Labor Relations Board—Series 3, hereby cer-  
tifies that the documents annexed hereto constitute  
a full and accurate transcript of the entire record

in a proceeding had before said Board entitled, "In the Matter of Gilfillan Bros., Inc. a Corporation and International Association of Machinists, District Lodge #94, for and on behalf of Lodge #311," the same being Case No. 21-C-2281, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Charles W. Schneider, Trial Examiner for the National Labor Relations Board, on June 30, July 1, 2, 5, 7, 8, 9, 10, 12, 14, 15 and 16, 1943, together with all exhibits introduced in evidence.

(2) Copy of Intermediate Report of Trial Examiner Schneider, dated September 11, 1943.

(3) Copy of order transferring the case to the Board, dated September 15, 1943.

(4) Copy of respondent's telegram, dated September 17, 1943, requesting extension of time to file exceptions and briefs.

(5) Copy of letter, dated September 18, 1943, granting all parties extension of time to file exceptions and briefs.

(6) Copy of respondent's letter, dated September 22, 1943, requesting oral argument before the Board.

(7) Copy of notice of hearing for the purpose of oral argument before the Board, dated October 1, 1943.

(8) Copy of respondent's exceptions to the Intermediate Report, sworn to October 6, 1943.

(9) Copy of list of appearances at oral argument before the National Labor Relations Board October 29, 1943.

(10) Copy of Decision and Order issued by the National Labor Relations Board November 13, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 1st day of February 1944.

[Seal]

JOHN E. LAWYER

Chief, Order Section

National Labor Relations  
Board.

[Title of Circuit Court of Appeals and Cause.]

No. 10688

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Cir-  
cuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Gilfillan Bros., Inc., and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Gilfillan Bros., Inc. a Corporation and International Association of Machinists, District Lodge #94, for and on behalf of Lodge #311, Case No. 21-C-2281."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire

record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on November 13, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceedings provides as follows:

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Gilfillan Bros., Inc., and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Gilfillan Employees Mutual Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to Gilfillan Employees Mutual Association or to any other labor organization of its employees;

(b) Recognizing Gilfillan Employees Mutual Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Giving effect to the contract of May 1, 1943, with Gilfillan Employees Mutual Association, or to any modification, extension, or renewal thereof;



(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Gilfillan Employees Mutual Association, and completely disestablish that organization, as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment;

(b) Post immediately in conspicuous places in its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 (a), (b), (c), and (d) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On November 13, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Nourse & Jones, respondent's attorney in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By .....

Howard Lichtenstein

Assistant General Counsel.

Dated at Washington, D. C. this 15th day of February 1944.

District of Columbia, ss:

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ HOWARD LICHTENSTEIN  
Assistant General Counsel

Subscribed and sworn to before me this 15th day of February 1944.

[Seal] /s/ JOHN E. LAWYER  
Notary Public, District of Columbia. My commission expires August 31, 1944.

[Endorsed]: Filed Feb. 21, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

ANSWER OF GILFILLAN BROS., INC. TO PETITION FOR ENFORCEMENT OF ORDER OF NATIONAL LABOR RELATIONS BOARD

Comes now Gilfillan Bros., Inc. and in answer to the petition filed herein by the National Labor Relations Board, admits, denies and alleges as follows:

I.

Alleges that the order of the National Labor Relations Board, enforcement of which is herein sought against this Respondent, is contrary to law, void and of no effect, in that the Findings of Fact, Conclusions of Law, and the decision and order based thereon are not supported by substantial evidence.

FOR A FURTHER AND SEPARATE  
DEFENSE:

I.

That the Intermediate Report of the Trial Examiner, which was adopted by the National Labor Relations Board as a part of its decision, is contrary to the evidence and is not supported by substantial evidence.

FOR A FURTHER AND SEPARATE  
DEFENSE:

I.

That the decision of the Board is contrary to, and not supported by, the Findings of Fact made by the Trial Examiner and adopted by the Board in this: that by the Findings of the Trial Examiner adopted by the Board it is found that there is not any substantial evidence to support the allegations of the complaint as to the violation by this Respondent of Section 8(1) of the National Labor Relations Act; and in this: that the Trial Examiner has found that there was no substantial evi-

dence to support the allegations of Paragraphs 10 and 11 of the complaint on file herein.

FOR A FURTHER AND SEPARATE  
DEFENSE:

I.

That the order of the National Labor Relations Board against this Respondent is contrary to law, void and of no effect, and in excess of the jurisdiction of said Board in that it is an attempt to enforce the terms of the National Labor Relations Act by the extraordinary remedy of a blanket injunction.

FOR A FURTHER AND SEPARATE  
DEFENSE:

I.

That the order of the National Labor Relations Board is void and of no effect in that it seeks to compel this Respondent to cease and desist from acts in the future which were not involved in this proceeding and as to which no evidence has been introduced in this proceeding and as to which no Findings of Fact have been made in this proceeding.

FOR A FURTHER AND SEPARATE  
DEFENSE:

I.

That there was no evidence that this Respondent has committed any act in violation of Section 7 or Section 8(1) or Section 8(2) of the National Labor Relations Act.



Wherefore, Respondent prays:

1. That the petition for enforcement be denied, and that this Court enter its order vacating, setting aside and annulling said order.

2. That this Court enter an order staying the enforcement of the order of the Board, enforcement of which is herein sought, pending the termination of this review by this Court.

3. That this Honorable Court grant to Respondent such other and further relief in the premises as the rights and equities of the cause may require.

PAUL NOURSE,

Attorney for Respondent,

Gilfillan Bros., Inc.

(AFFIDAVIT OF SERVICE BY MAIL

—1013a, C. C. P.)

No. CCA 10688

State of California,

County of Los Angeles—ss.

Phyllis Payne, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 1017 Rowan Building, 458 S. Spring Street, Los Angeles 13, California that on the 22 day of March, 1944, affiant served the within Answer of Gilfillan Bros., Inc. on the petitioner in said action, by placing a true copy thereof in an envelope addressed to the at-

torney of record for said petitioner at the office address of said attorney, as follows: (Here quote from envelope name and address of addressee.) "Mr. Howard Lichtenstein, Assistant General Counsel for National Labor Relations Board, Rochambeau Building, Washington, D. C."; and by then sealing said envelope and depositing the same, with postage therein fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regular communication by mail between the place of mailing and the place so addressed.

PHYLLIS PAYNE

Subscribed and sworn to before me this 22 day of March, 1944.

[Seal] MARGUERITE BAUER,  
Notary Public in and for the County of Los Angeles, State of California.

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[Title of Circuit Court of Appeals and Cause.]

### STATEMENT OF POINTS

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the trial of the above-entitled case to the Court:

I.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

II.

The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 15 day of February 1944.

HOWARD LICHTENSTEIN,  
Assistant General Counsel  
National Labor Relations  
Board.

[Endorsed]: Filed Feb. 21, 1944. Paul P. O'Brien, Clerk.

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ORDER TO SHOW CAUSE

CCA #10688

United States of America, ss:

The President of the United States of America  
To Gilfillan Bros., Inc., 1815 Venice Blvd., Los  
Angeles, Cal.; International Association of Ma-  
chinists District Lodge No. 94, on behalf of  
Lodge 311, A.F.L., 532 Maple Avenue, Los An-  
geles, Calif., and Gilfillan Employees Mutual  
Association, 1815 Venice Blvd., Los Angeles,  
California.

## GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 21st day of February, 1944 a petition of the National Labor Relations Board for enforcement of its order entered on November 13, 1943 in a proceeding known upon the records of the said Board as

“In the Matter of Gilfillan Bros., Inc., a corporation, and International Association of Machinists, District Lodge #94, for and on behalf of Lodge #311, Case No. 21-C-2281,”

and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 21st day of February in the year of our Lord one thousand, nine hundred and forty-four.

[Seal]                      PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit

## RETURN ON SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named International Association of Machinists District Lodge #94, on behalf of Lodge 311, A.F.L. by handing to and leaving a true and correct copy thereof with Mr. Stanley Stearns, Senior Business Agent personally at Los Angeles in said District on the 24th day of Feb., 1944.

ROBERT E. CLARK

U. S. Marshal.

By JOHN C. BROOKE

Deputy.

Marshal's Fees .....\$6.00

Mileage .....\$ .30

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Total .....\$6.30

## RETURN ON SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named Gilfillan Employees Mutual Association by handing to and leaving a true and correct copy thereof with Ray Johnson, Chairman of Employee's Committee



personally at Los Angeles in said District on the 24th day of Feb. 1944.

ROBERT E. CLARK

U. S. Marshal.

By JOHN C. BROOKS

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,

Southern District of California—ss.

I hereby certify and return that I served the annexed order to show cause on the therein-named Gilfillan Bros., Inc. by handing to and leaving a true and correct copy thereof with Miss I. Kemp, Secretary and Treasurer personally at Los Angeles in said District on the 24th day of Feb., 1944.

ROBERT E. CLARK

U. S. Marshal.

By JOHN C. BROOKE

Deputy.

[Endorsed]: Filed Feb. 28, 1944. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board

Twenty-first Region

Case No. 21-C-2281

In the Matter of:

GILFILLAN BROS., INC.

and

INTERNATIONAL ASSOCIATION OF MA-  
CHINISTS, DISTRICT LODGE No. 94, for  
and on behalf of LODGE 311, AFL

Room 920, Board of Trade Building

111 West Seventh Street,

Los Angeles, California

Wednesday, June 30, 1943

The above-entitled matter came on for hearing,  
pursuant to notice, at 10 o'clock, a.m.

Before:

Charles W. Schneider, Trial Examiner.

Appearances:

William B. Esterman,

111 West Seventh Street,

Los Angeles, California,

appearing on behalf of the National Labor  
Relations Board.

Nourse & Jones,

By: Paul Nourse and

Everett W. Thompson

1017 Rowan Building,

Los Angeles, California,

appearing for the Respondent, Gilfillan  
Bros., Inc.

Philip L. Wilson, Jr.,

453 South Spring Street,

Los Angeles, California,

appearing for Employees Mutual Asso-  
ciation. [1\*]

Myrtle M. Volz,

7806 Lou Dillon,

Los Angeles, California,

appearing for the International Association  
of Machinists, Lodge 311. [2]

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Trial Examiner Schneider: With respect to the application for intervention by Gilfillan Employees Mutual Association, the application to intervene is granted to the extent to the interest of the Employees Mutual Association. [12]

Mr. Nourse: As to 1-a of Appendix A to the subpoena duces tecum, I make the following statement on the record. Just let me read it first:

"1. All books and records of Gilfillan Bros. Inc. showing:

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\* Page numbering appearing at top of page of original Reporter's Transcript.

- a. The amount, by volume or dollar value, of all goods, merchandise, supplies, materials and equipment purchased by the company for production and maintenance purposes during the calendar year 1942, together with the amount, by volume or dollar value, of such purchases or deliveries from sources of supply outside the State of California.
- b. The amount, by volume or dollar value, of all goods and finished products manufactured, processed, sold and distributed by Gilfillan Bros. Inc. during the calendar year 1942, together with the amount, by volume or dollar value, of such sales and distributions to places, persons or firms outside the State of California.”

As to those, I make the statement to the Trial Examiner, that under the secrecy agreement signed by Gilfillan Bros. Inc. [14] with various agencies of the United States government, we can not and will not produce those books and records. We have agreed that they shall not be made public in any manner, shape or form. For the purpose of the record, however, I am willing to stipulate so as to not—we have not denied in our answers, you will note, the interstate commerce. I don't see that it is material to the record, in view of there being no issue of fact made—but, I am willing to stipulate that sales in interstate commerce, that is sales from California delivered outside the state were twenty-

eight per cent of our volume in 1942, and that that exceeded \$100,000.00.

Mr. Esterman: That is, the twenty-eight per cent did?

Mr. Nourse: Yes. And purchases from outside the state delivered into this state were eleven and thirty-two one hundredths per cent, or over eleven per cent, and that that exceeded \$100,000.00; and that all of those purchases and sales were made in those per centages in performance of contracts, either prime or sub-contracts, with the Government of the United States.

Mr. Esterman: You offer that as a stipulation?

Mr. Nourse: Yes, for the purpose of this proceeding only.

Mr. Esterman: I join in that stipulation, Mr. Examiner. [15]

Trial Examiner Schneider: May I ask this question of counsel for respondent: the company is a corporation?

Mr. Nourse: Yes.

Trial Examiner Schneider: Organized under the laws——

Mr. Nourse: And existing under the laws of the State of [16] California.

Trial Examiner Schneider: Thank you.

Mr. Wilson: I believe one statement that is in order for the benefit of the Trial Examiner, to the effect that there was a fire at Gilfillan Bros. Inc.

Mr. Nourse: November 30, 1940 in which the entire plant was destroyed.



Mr. Wilson: All books and records were destroyed at that time.

Mr. Nourse: All books and records except open accounts; books and records of open accounts, accounts payable and receivable which were kept in a fireproof safe, all except those were destroyed.

Trial Examiner Schneider: What date?

Mr. Nourse: November 30, 1940.

Trial Examiner Schneider: Thank you.

Mr. Nourse: The plant has been rebuilt since then.

Trial Examiner Schneider: Same location?

Mr. Nourse: Same location.

Mr. Esterman: May we take that as a stipulation of fact then, because we may have reference to it from time to time?

Mr. Nourse: Sure.

Trial Examiner Schneider: There has been no change in the business since that fire?

Mr. Nourse: Since that time it has been almost entirely [17] 100 percent defense. Prior to that time we were engaged in the manufacture of radios and refrigerators, besides having sub-contracts. I say 100 per cent, but we maintain a local service organization for the things that we formerly sold. That is at a separate plant. It is entirely incidental to to anything else. [18]

## ALBERT WALTERS

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and [19] testified as follows:

## Direct Examination

Q. (By Mr. Esterman): Mr. Walters, you are the machine shop night superintendent at Gilfillan Bros. Inc.; is that correct? A. That's right.

Q. And that takes in what shift?

A. Night shift; from six to six; two nights on and one night off.

Q. And does your supervision—what does it include with respect to departments?

A. It includes all the automatics, turrets, mills——

Q. You are speaking of machinery, now?

A. That's right; drill presses, burr department; and work in that building which is machine.

Q. Is the machine shop considered as being a department or are there departments in the machine shop; that is what I am getting at?

A. Departments in the machine shop.

Q. Will you name those department employees?

A. You have them all there; rework department, burr department, [20] drill press.

Q. How long have you been with Gilfillan Bros. Inc.? A. Since August 1, 1941, I think.

Q. Have you been employed in that capacity since you came with the Company?

A. That's right; that is 1942 not 1941.

Q. August 1, 1942? A. Yes.

(Testimony of Albert Walters.)

Q. With reference to these departments; you have persons in charge of any one or combinations of those departments who are under your authority?

A. We have leadmen or foremen, as they are sometimes called.

Q. Name one? A. Godfrey; Carl Godfrey.

Q. What is he in charge of?

A. Turret department. [21]

Q. Turret lathes? A. That's right.

Q. Name another?

A. John Stan, automatics.

Q. Yes?

A. In drill press—in mills we have Al Bluel.

Q. Yes?

Mr. Wilson: What department is he in?

The Witness: Milling department.

Mr. Nourse: Who is in drill press?

The Witness: At the time that this was taking place, George Nelson.

Q. (By Mr. Esterman): Who is the foreman now in the drill press department?

A. We just have a few fellows working. I am more or less overseeing that.

Q. You have no one under you who oversees that? A. No. [22]

Q. Have you named all the persons who are in charge under your supervision? A. Yes, sir.

Q. Of these departments? A. Yes, sir.

Q. To whom are you responsible, Mr. Walters?

[23]

(Testimony of Albert Walters.)

A. Mr. Chester Cramer.

Q. And Mr. Cramer is what?

A. Well, he is shop superintendent; that would be his title.

Q. Is that with relation only to the night shift or all shifts?      A. All shifts.

Q. He is the shop superintendent?

A. That's right.

Q. And do you know whom he reports to?

A. Mr. Sparks, I believe.

Q. Do you know a man named George Nelson who used to work for the Company?

A. Yes, sir.

Q. He left the Company sometime in March, did he not?

A. I believe that was the time; I don't recall exactly.

Q. And in what capacity was he employed at the time he left?      A. Drill press leadman.

Q. How many people did he lead?

A. Fifteen or more, something like that; ten to fifteen, something like that.

Q. That would be during the time that you were with the Company?      A. That's right. [24]

Q. That is to say, that he occupied that position when you came with the company?

A. Well, I believe he was hired just shortly after I came.

Q. And was he hired in that capacity?

A. That's right.

(Testimony of Albert Walters.)

Q. And he continued in that capacity?

A. That's right.

Q. Will you explain to us what you mean by leadman?

A. Well, a leadman or foreman are practically the same category.

Q. Yes?

A. Some shops would call them leadmen and others call them foremen.

Q. Did he direct the work of the people under him in the sense that he told them what to do?

A. Yes.

Q. And when to do it?                      A. Yes.

Q. Did he discharge and hire people for work in his department?

A. No; that wasn't his job.

Q. What was done in connection with hiring of people for the drill press work; how was that arranged?

A. That is taken care of by the personnel office. He [25] comes in with a card to report to work and he just reports to work.

Trial Examiner Schneider: Are you referring just to Nelson or the category of foreman and leadman generally?

Mr. Esterman: I am referring to Nelson.

Q. (By Mr. Esterman): I am referring to Nelson.                      A. That's right.

Q. During the time that Nelson was there, were there any people discharged from his department?

A. I don't specifically recall any cases, but it is possible that there was.



(Testimony of Albert Walters.)

Q. Do you recall whether he ever discharged anyone?

A. I believe there was one. I am not sure who he was or what his name was.

Q. I take it that Mr. Nelson in his capacity as foreman or leadman, as you call him, from time to time borrowed workers from other departments?

A. Well, yes, if he could. If there was any available help to put on drill presses he would.

Q. He had that authority?

A. Well, no, he would always come to me first.

[26]

Q. I mean to say that he would, if he needed additional personnel on drill presses, he would come to you and you would furnish them if you had them?

A. That's right.

Q. And you have done that on some occasions?

A. That's right.

Q. And did he ever move people out of the drill press work into other work?

A. I think so.

Mr. Nourse: You mean did he, Nelson, do it, or did Walters?

Mr. Esterman: Nelson.

The Witness: I imagine between him and, well, the forelady or leadlady on the burr bench, Miss Goebels, I think, between the two, why, if extra work or help was needed in one department and they had an extra man or woman, why, they would transfer her back and forth.

Q. (By Mr. Esterman): That is, Mr. Nelson and Miss Goebels or Mrs. Goebels,—which is it?

(Testimony of Albert Walters.)

A. I don't know.

Q. At any rate, her name was Goebels. Marjorie Goebels? A. Marjorie.

Trial Examiner Schneider: What was her status?

The Witness: She was a forelady over the women in the burr department. [27]

Trial Examiner Schneider: Over the women in the burr department?

The Witness: That's right.

Q. (By Mr. Esterman): That is to say, that there have been, and this was during the time that Mr. Nelson was there, there have been transfers, temporary transfers, from the drill press department into other departments, and from other departments into the drill press department?

A. Yes, that's possible; yes, sir.

Q. Generally, they were arranged by requests of Mr. Nelson to you, if he wanted the persons?

A. That's right.

Q. I started to ask you before whether there were occasions when he transferred persons out of the drill press into other work?

A. Well, if work was a little slack in drill press, and he had a couple of fellows he didn't have any use for for a couple of hours, he would bring them to me, and I would put them to work in some other department.

Q. That is, he would say, "These men——"

A. "There is no work for them."

Q. "There is no work for them," and you put them to work some place else; is that correct?

(Testimony of Albert Walters.)

A. That's right.

Q. Now, is the statement you just made applicable to [28] Marjorie Goebels? Is that applicable in her case also, with respect to girls on the burr work?

A. Yes, but I don't believe—I don't recall of her having anybody transferred around.

Q. Well, let me ask you this: during the time that you have been with the company and she has been in charge of that burr bench, has she ever made requests of you for additional workers?

A. Yes.

Q. And have you furnished those workers when you had them?

A. That's right.

Q. Has she ever brought you workers and told you she didn't have enough for them to do, and she wanted them to do something else?

A. Well, there is usually enough back there to keep them busy. As a rule, we have never taken them out or taken them down from the burr department and put them in any other department, because they as a rule didn't work out in any—have never had the experience to work in another department. [29]

Q. Now, as of February 22nd and up to that date, about how many persons did your supervision account for, approximately?

A. Well, between 35 and 50.

Trial Examiner Schneider: That is the burr department?

The Witness: No, that is the total.

(Testimony of Albert Walters.)

Trial Examiner Schneider: The total in the machine shop?

The Witness: In the machine shop department.

Trial Examiner Schneider: On the night shift?

The Witness: On the night shift, that's right.

Trial Examiner Schneider: And what was that number?

The Witness: 35 to 50, somewheres in there.

Q. (By Mr. Esterman): What is the situation now with [32] respect to that?

A. Well, I believe there is about 25 to 30, something like that. [33]

Q. (By Mr. Esterman): You did observe some union buttons? And by "union buttons" I mean A. F. of L. Machinists' buttons, you did observe some unions buttons worn on your shift, did you not? A. That's right.

Q. And you knew that some of the people that worked on the night shift in the machine shop were members; is that right?

A. I assumed as much, yes.

Mr. Nourse: May I interrupt there?

Mr. Esterman: Yes.

Mr. Nourse: You assumed that from the fact they wore buttons; is that it?

The Witness: That's right.

Q. (By Mr. Esterman): Now, from your observation and from what you saw on the night shift and what you heard, were you able to form any opinion as to what percentage of the people em-

(Testimony of Albert Walters.)

ployed in the machine shop night shift were active in the A. F. of L. Machinists'? [36]

Trial Examiner Schneider: Do you still press your objection?

Mr. Nourse: No, I will let it go. We now have some basis on which to express an opinion.

The Witness: Well, from the visual appearance of the buttons, why, there was quite a few; the biggest majority, I would say.

Q. (By Mr. Esterman): The biggest majority?

A. That's right.

Q. More than half, you would say? A. Yes.

Trial Examiner Schneider: Your conclusion is based entirely upon the number of buttons that you saw displayed in the machine shop?

The Witness: Yes.

Trial Examiner Schneider: That is to say, the number of people who were wearing buttons, A. F. of L. buttons?

The Witness: That's right.

Trial Examiner Schneider: In the machine shop?

The Witness: Yes.

Trial Examiner Schneider: Constituted the great majority of the employees in the machine shop?

The Witness: That's right. [37]

Q. (By Mr. Esterman): Now, there is a man named Harry Bucknell on your shift, is there not?

A. That's right.



(Testimony of Albert Walters.)

Mr. Esterman: That is B-u-c-k-n-e-l-l. Is that right, Mr. Sparks?

Mr. Sparks: Correct.

Q. (By Mr. Esterman): And his function is what?

A. He is a tool room clerk, or I believe that would be his title.

Q. He hands out the tools to the workers? [52]

A. That's right.

Q. Do you have a special place where the tools are kept,—a tool crib? A. Yes.

Q. And he spent some or most of his time there; is that right? A. Yes.

Mr. Nourse: Mr. Esterman, I call your attention to the fact that it is now 12:10 and we are never going to finish with this witness before the noon recess if I am to finish cross examination.

Mr. Esterman: I don't know how much time we are going to spend, now.

Mr. Nourse: Well, I can call him back at a later time for cross examination if you are trying to get through with him so that he can get a little sleep.

Mr. Esterman: I intend to finish with him very shortly, unless you have a lengthy cross examination.

Mr. Nourse: I will not be able to finish in less than the time you are taking.

Q. (By Mr. Esterman): What connection, if you know, did Mr. Bucknell have with the E. M. A.?

A. Well, he is a member, so far as I know, and at times he would—a few times I have seen him collect dues for the E. M. A. [53]

(Testimony of Albert Walters.)

Q. That is, dues would be paid, E. M. A. dues would be paid to him at the tool crib?

A. That's right.

Q. Did you observe him from time to time carrying on this activity?

A. Well, only a few times.

Q. Would this be a monthly or a weekly affair, or would it occur every day?

A. No, it was a monthly collection.

Q. These collections were made by him during working hours? A. Yes, sir.

Q. Did you ever have the subject up with him, as to whether or not he should or shouldn't collect dues on company time?

A. No, I didn't stop him.

Q. Do you know anyone else in authority who stopped him or tried to stop him?

A. No, I don't know that.

Q. It is generally known, is it not, that he collects dues on the night shift for the E. M. A.?

A. Yes.

Mr. Nourse: I object. That is calling for a conclusion of the witness and would be pure hearsay.

Mr. Esterman: I withdraw the question. I agree with you, counsel.

Q. (By Mr. Esterman): During the course of your employment [54] with the company have you ever had up with the E. M. A., or anyone representing it, any grievance matters of employees on your shift in your department?

(Testimony of Albert Walters.)

A. Well, I don't handle the grievance matters and I don't——

Q. My question is if any grievance matters have been taken up with you by members or officers or committee men of the E. M. A.,—with you personally?      A. No.

Q. By the way, was there, in your knowledge, any attempt made to collect dues or solicit A. F. of L. memberships in the plant during the night shift?

A. Yes, I have seen that.

Q. What have you seen?

A. In the wash room one time there was one of the A. F. of L. members was trying to solicit a new member.

Q. You saw that?      A. Yes, sir.

Q. Did you do anything about it?

A. No, but I also told them that that was one A. F. of L. rule—that they were specifically told not to do it.

Q. Did you say “A. F. of L. rule”?

A. That is an A. F. of L. rule.

Q. Or you understood that?

A. I understood that to be an A. F. of L.—well, not a rule, but some kind of a—— [55]

Q. Do you recall any other instances of that nature, in your observation?

A. I have seen them on the smoke period, which at that time was company time, solicit for Union members.

Q. You are speaking of A. F. of L. solicitations?

A. That's right.

(Testimony of Albert Walters.)

Q. Did you ever join the E. M. A.?

A. No.

Q. You knew there was an E. M. A. when you came with the company? A. Yes, sir.

Q. What is your understanding of the nature of the organization, the E. M. A.?

Mr. Wilson: I object to that question on the ground it is not the best evidence, as to the nature of the organization, the E. M. A. That can be taken up with its duly authorized officers.

Trial Examiner Schneider: What is the purpose of your question, Mr. Esterman? You mean as to whether it was a labor organization?

Mr. Esterman: I want to know what he understood it to be.

Mr. Nourse: What materiality would that have? He is not a member, he has not been affected by it. The instruments that formed it I think would be the best evidence of it, and you have been furnished with copies of all those, Mr. Esterman. [56]

Mr. Esterman: All you have to do is to read the complaint, which alleges the E. M. A. was dominated and/or interfered with by the company; supported——

Mr. Wilson: That has been asked and answered by the witness, that he is not a member, that he does not have anything to do with the E. M. A.

Mr. Nourse: Have you finished?

Mr. Wilson: Yes.

Mr. Nourse: I would submit what this witness had understood is not material. He didn't ask:

(Testimony of Albert Walters.)

did you understand this was a company dominated union? That wouldn't prove the fact required or tend to prove it.

Mr. Esterman: I submit that the understanding of a number of people, that we can't call all our witnesses at one time, and I intend to show that they all had an understanding, that it was a general understanding, and that his understanding was only a part of the general understanding; and I submit that what the people in the plant understood, and in particular the foreman, is material to the issues in this case.

Mr. Wilson: That is not the question that was asked. The question asked was what his understanding of the E. M. A. was.

Mr. Esterman: Well, I don't think it was quite that. Let's have the question read. [57]

(Question read.)

Mr. Esterman: I don't think I can make it any plainer.

Trial Examiner Schneider: Let's hear the answer and I will reserve a motion to strike for both of you.

You may answer the question.

The Witness: Well, I haven't joined the E. M. A. I don't know its full activities. I don't know.

Trial Examiner Schneider: Well, can you answer the question?

The Witness: Well, not very well, I guess. I don't know just what to say about that, or how to put it. It is an organization that—



(Testimony of Albert Walters.)

Q. (By Mr. Esterman): Well, you didn't understand it was a pinochle club, did you?

A. No, I will grant you that. It is a labor organization, but I have never had any dealings with it. I just didn't bother with it?

Mr. Esterman: Well, I won't press that.

Trial Examiner Schneider: Are you moving to strike the answer?

Mr. Nourse: I don't see any answer.

Trial Examiner Schneider: I don't either.

Mr. Esterman: That is all.

Trial Examiner Schneider: Do you want to proceed with cross examination? [58]

Mr. Nourse: It is twenty minutes after 12:00. I think it will take me at least thirty minutes. I can continue, if you want, or he can come back later. May I ask the witness? I think he should be considered. When do you go back on your shift?

The Witness: Six o'clock this evening.

Mr. Nourse: Six o'clock this evening. And when did you get off?

The Witness: Well, I have been off about thirty hours.

Mr. Nourse: You had 30 hours. Then you don't need to get your sleep?

The Witness: Well, I could stand with an hour's sleep, but I can do without it, if necessary.

Mr. Nourse: I can call him on another day, Mr. Examiner, if you wish. He has days off.

The Witness: Well, do you want to go out and eat and then come back a little later? I can do that.

(Testimony of Albert Walters.)

Mr. Esterman: Why can't we eat a little later?

The Witness: Can we do that?

Trial Examiner Schneider: You mean you would be willing to finish up now?

The Witness: Sure. Let's get finished then.

Mr. Nourse: All right.

Trial Examiner Schneider: Proceed. [59]

### Cross Examination

Q. (By Mr. Nourse): Now, you spoke of foremen and leadmen, saying that in some places they are called foremen and in other places leadmen. These people that you have referred to sometimes as leadmen, such as Miss Goebels, George Nelson, and others there in the plant, their work is to lay out the work for those under them, is it not?

A. That's right.

Q. Now, you also spoke of one man being discharged by Nelson. Did he ever himself discharge a man?

A. No, his recommendation, if I didn't see it, was turned in to Mr. Cramer, and if, with all due respects, he wasn't the man for the job, why, we would lay him off.

Q. In other words, if a leadman found out someone wasn't carrying out orders or wasn't properly performing that work, he would report that fact to you?

A. That's right.

Q. And you would report it to Cramer?

A. That's right.

Q. And the decision would be made up there as to whether the man should be discharged or not?

(Testimony of Albert Walters.)

A. Well, our decisions are more or less final, but we have to make it through him in order to get through the office and get through the payroll.

Q. By "our" you mean yourself and Cramer's; is that right? [60]

A. Well, the leadman has a good bit to say there, too. It is through him that we form our decisions a great bit of the time.

Q. They give you the facts on which you form your decisions? A. That's right.

Q. But the leadman hasn't any power to say to the man, "You are through; get your time"?

A. No, not directly. He usually brings it up to the general foreman first.

Q. Well, does he tell a man to get his time?

A. No. I don't believe there has been any case of it, that I know of. [61]

Q. —did you know anything about the Union affiliations of any of the persons whose names I have just read? A. No, I didn't.

Trial Examiner Schneider: That is, other than Ella Richardson, you saw no others wearing Union buttons?

The Witness: I never saw any of the burr department wear any of their buttons. If they belonged to it, I didn't know it. Ella Richardson was the only one of the girls that wore it.

Q. (By Mr. Nourse): How many men have you left on the night shift that still wear A. F. of L. buttons? What percentage of your men now wear them?

(Testimony of Albert Walters.)

A. Well, let me see. There is about half of them, I believe; something like that.

Q. That has been true ever since February 22nd?

A. Yes. [64]

#### Redirect Examination

Q. You stated that in cases of discharge or re-classification of people—I have forgotten what your exact language was—but you recall discussing with Mr. Nourse this matter of George Nelson making recommendations to you?

A. That's right.

Q. Do you recall whether you ever refused to accept any recommendation he made of that nature?

A. No, I don't believe I have. I don't believe I have refused any of his recommendations.

Q. Do you recall whether any recommendations made by him or by you, or by you and George Nelson jointly, were ever reversed or refused by Mr. Cramer?

A. No, I don't believe so.

Mr. Esterman: That is all.

Mr. Wilson: I have one question I would like to ask.

#### Recross Examination

Q. (By Mr. Wilson): With regard to these leadmen or foremen you have talked of, do they operate any machines themselves?

A. No. No, they may set a machine up and get it in running order and then put an operator on it.

[67]

(Testimony of Albert Walters.)

Recross Examination

Q. (By Mr. Nourse): That isn't true of Marjorie Goebels in the burr department, is it?

A. Well, if a new girl comes in, at that time Marjorie would take her up to the sanding machine or buffing wheels and she would do ten or fifteen parts and show the girl how it was done and then leave the girl.

Q. And then would she go back to work on a machine or not? I know she isn't there now, but did she?

A. Most of her time was taken up by running the work and seeing that they do the work right.

Q. And the rest was spent on a machine?

A. She didn't spend much on the machines.

Q. Did she spend any time when she had done what you relat- [68] ed? Did she go back to a machine of her own?

A. I have seen her work at a machine, yes.

Q. (By Trial Examiner Schneider): Mr. Walters, exactly what does a leadman or foreman do?

A. Well,—

Q. Describe his duties.

A. Well, let's take the case of Godfrey. He is on the turret lathes. He has 15 turret lathes underneath him. Now he has a setup man along with him. Now, if there is—

Q. Is the setup man subordinate to Godfrey?

A. To Godfrey, that's right.

Q. That is, Godfrey is his boss?

A. That's right. Now, when they take on from



(Testimony of Albert Walters.)

another [69] shift the first thing they do is to go up and down the line and check the machines or the parts coming off of the machines, and if there is anything the matter, if there are two machines down, Godfrey will take one and the setup man will take the other, and they will take them and get them in running order. If there is only one down, the setup man will take it and Godfrey will check parts or see to the work coming off.

Q. Suppose your operator is not doing his work properly; what does the leadman or foreman do?

A. He will take the machine and show him how it should be done, and if the operator is unable to do it then, why, then as a rule the operator is not competent to handle the job.

Mr. Nourse: I am sorry. I couldn't hear that.

The Witness: If he is not competent enough, why, then we can't keep the man on.

Mr. Nourse: Pardon me. But what does the foreman do about that? When he sees he is incompetent, what does the foreman do about that?

The Witness: He just reports it to me, and as a rule I am in contact with the help enough so that I know what is going on, and between the two of us, why, we decide whether the man is the right man to keep or not. If not, why, we turn in his time.

Q. (By Trial Examiner Schneider): That is, you and the [70] leadman or foreman discuss what should be done about him?

A. That's right.

Q. And you make a decision?

(Testimony of Albert Walters.)

A. That's right.

Mr. Nourse: And who is it makes the decision after you discuss it,—you or the leadman?

The Witness: Well, it is usually—both of us have enough to say, and I think we are both of the same mind when we end up on it.

Mr. Nourse: In other words, you get along with your leadman; is that it?

The Witness: Absolutely.

Q. (By Trial Examiner Schneider): Do you give consideration to the opinion of the leadman with respect to the competency or incompetency of any of your operators? A. Absolutely.

Q. You do? A. Absolutely.

Q. And you put weight on it? A. Yes.

Q. Now, in your testimony you mentioned Mr. Sparks. What does he do?

A. He is—well, when I came on Mr. Sparks was superintendent of the shop. At least, that is the way I took it, and he is over Mr. Cramer. I don't know his exact title, [71] but shop superintendent would be the way I have known him all the time.

Q. Now, you also mentioned Mr. Gilfillan. What is his position with the company?

A. Well, I have always known him to be the owner of the company. I don't know what else, what other title he has, but he is the owner, in my opinion.

Mr. Nourse: It will be stipulated he is president.

Mr. Esterman: President of the corporation.

The Witness: President. [72]

(Testimony of Albert Walters.)

Q. Now, you made some statement with reference to a smoking period, which you said was on company time. Did you mean by that that the men got definite periods during which they might smoke?

A. Yes, sir; there are two periods.

Q. But they were paid for that time?

A. That's right. [76]

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GEORGE J. NELSON

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): You are employed where?

A. Parker Appliance Company.

Trial Examiner Schneider: How do you spell that?

The Witness: P-a-r-k-e-r.

Q. (By Mr. Esterman): That is here in Los Angeles?

A. Yes.

Q. In what capacity?

A. Inspector, gauge inspector. [80]

Q. You say, gauge inspector?

A. Yes.

Q. You were at one time employed by Gilfillan Bros., Inc., were you not?

A. Yes, sir.

Q. And you started there when?

(Testimony of George J. Nelson.)

A. About October 8th or 9th.

Q. Of what year, please? A. 1942.

Q. And you left? A. March 6, 1943.

Q. When you worked for Gilfillan Bros., Inc., were you a member of the E. M. A.?

A. I signed up the first time I was there but I never attended any but one meeting of it. I didn't like the oath that they had on the back of their membership card and I refused to sign or have anything more to do with it.

Q. What do you mean, you "signed up"? Will you explain that to us?

A. Well, when they came around and told us about it, I joined it.

Q. When was this, Mr. Nelson?

A. Maybe right after the first payday.

Q. Shortly after you came with the company?

A. Yes, I was there three weeks. [81]

Q. When you say "they", do you recall who it was? A. I couldn't tell.

Q. Someone who worked in the plant?

A. Yes, he worked in the plant.

Q. Was it more than one person?

A. No, just one.

Q. You don't know who he was?

A. I don't really know his name; no.

Q. What was your position with Gilfillan Bros., Inc.?

A. Drill press foreman, afternoon shift, on the afternoon shift.

Q. That would be from what time to what time?

(Testimony of George J. Nelson.)

A. 2:30 to 11:00.

Q. And you were responsible to whom?

A. To Mr. Cramer, Mr. Sparks.

Q. That is Chester Cramer.

A. Chester Cramer.

Q. And Mr. Sparks, the vice-president of the company? A. Yes, sir.

Q. Was your supervision over any other kind of work other than drill pressers?

A. I had the rework bench. [82]

Q. (By Mr. Esterman): You came with the company in October of last year; was there a burring and a buffing department on that shift?

A. Yes, sir.

Q. And under whose supervision was that?

A. What is that?

Q. Under whose supervision was that?

A. That was after Mr. Brooks left at 3:00 o'clock and then I took over.

Q. You took over the burring department?

A. Yes.

Q. Until? A. Until 11:00.

Q. 11:00 o'clock at night? [83] A. Yes.

Q. How long did that situation continue?

A. Oh, until about the middle of November.

Q. What happened in the middle of November?

A. They made a bigger department of it and put a Miss Goebels on it.

Q. You were talking of the burring department?

A. Yes.



(Testimony of George J. Nelson.)

Q. Was she put in charge of the burring department?           A. Yes, sir.

Q. Exactly what did the burring department consist of then?

A. Burring all parts, buffing them, cleaning them up.

Q. Did it include——

A. Rework the threads on them, just buff them up; clean them up.

Q. I take it that was done because the volume of work there had increased.           A. Yes, sir.

Q. What was your relationship in the plant to Al Walters, night superintendent?

A. My relationship to him?

Q. Yes.           A. None.

Q. With respect to your authority or his?

A. Why, when he was on nights, he was in direct charge of [84] the plant at nights.

Q. Were you required to report to him in any connection?

A. Well, yes; as far as if anything went radically wrong we went to him for advice.

Trial Examiner Schneider: Did you take orders from Walters if he gave them?

The Witness: Oh, yes, he was superintendent.

Q. (By Mr. Esterman): Of course, he would come on at a later hour.

A. 6:00 o'clock at night.

Q. But in advance of that time, between 2:30 and when Walters came on, you were responsible directly to Chester Cramer?           A. Yes.

(Testimony of George J. Nelson.)

Q. Now, how many people worked for Mrs. Goebels, then, starting in November, when this change was made? Do you know?

A. An average of about 20.

Q. About? A. 20.

Q. Were they women or men, or both?

A. Women.

Q. All women? A. All women.

Trial Examiner Schneider: Which department was that? [85]

The Witness: Burring department.

Trial Examiner Schneider: This was before or after the change was made?

The Witness: After the change was made.

Q. (By Mr. Esterman): Was she then hired, or brought from some other part of the plant?

A. I understood she was hired. I never knew the woman previous to that.

Q. Between late November when she took over the burring department and the time you left, with reference to that time, was there any interchange of employees or shifting of employees from drill press to burr bench, or from one operation to another in the machine shop, in your observation?

A. Well, when I needed girls, the only way I could get help is from the burr bench.

Q. I didn't hear that.

A. When I needed more help.

Q. When you needed girls?

A. When I needed more help to do my work I went and got them off the burr bench, and if they

(Testimony of George J. Nelson.)

proved satisfactory, why, they were transferred over to my department.

Q. And you would consult with Mrs. Goebels?

A. Yes.

Q. And you would ask her for the girls?

A. Yes. [86]

Q. And she would turn them over to you?

A. Yes, sir.

Q. Did either of you consult with anyone else about that change; making such a change?

A. The understanding was for Mr. Chester Cramer, if I ever wanted them, to go and get them off the burr bench.

Q. But you would see her first about it?

A. Oh, yes. [87]

Q. Now, did you know whether any of the people on your shift and in your department were active in the A. F. of L.?

A. Not to the best of my knowledge; they would never let me know anything like that. They worked quietly.

Q. Did you know whether there was any activity at all?

A. It seemed everyone in the shop was inclined that way, to affiliate themselves with the union.

Trial Examiner Schneider: With some of the unions, did you say?

The Witness: What is that?

Trial Examiner Schneider: With some of the unions?

(Testimony of George J. Nelson.)

The Witness: With the unions, with the C. I. O., or A. F. of L., whichever was going to get in.

Q. (By Mr. Esterman): What I am getting at, perhaps I don't make myself clear, Mr. Nelson, is whether you had any knowledge of the extent of the membership in your department. A. No.

Q. Generally, I mean, not with reference to any particular person? A. No.

Q. Did you have an idea that there were some A. F. of L. membership there? A. There was.

Q. You don't know to what extent?

A. Not to any extent. [91]

Q. Did you have any idea as to whether or not the A. F. of L. membership on your shift was any more or less active than it was on the others?

A. Yes.

Q. What was your idea?

Mr. Nourse: I would like to know what it is founded on; or whether he saw it, or what.

The Witness: The way the men were talking amongst themselves. A rumor from the day shift that they were not interested in it.

Mr. Esterman: I think I laid all the foundation I could.

Mr. Nourse: All right; I will bring it out in cross examination.

Q. (By Mr. Esterman): Do you have the question in mind? A. No, I haven't.

Mr. Esterman: Will you please read the question?

(The record was read.)

(Testimony of George J. Nelson.)

Q. (By Mr. Esterman): Was it your impression that the A. F. of L. was more or less active on your shift than on other shifts?

A. They were more active than on the other shifts.

Q. You spoke of attending one E. M. A. meeting; is that correct? A. That is right. [92]

Q. And that took place when?

A. Sometime in January.

Q. That would be the first week in January?

A. About that time.

Q. Do you recall what business, if any, was conducted at that meeting; in a general way, I mean?

A. It was just a riot to find out to get a grievance committee elected.

Q. Did they elect a grievance committee?

A. They did; they asked for five and they got seven.

Trial Examiner Schneider: Will you read the preceding answer, please?

(The record was read.)

Trial Examiner Schneider: Is that what you meant to say, it was just a riot?

The Witness: Yes.

Mr. Nourse: What preceded that?

(The reporter read the record.)

Q. (By Mr. Esterman): Was Roy Johnson one of the men elected to the grievance committee?

A. He was the president, the way I understood it.



(Testimony of George J. Nelson.)

Q. Do you know whether he was elected to that committee? A. I don't think so.

Q. Was Otto Stegner elected to that committee?

A. I think he was. [93]

Q. Was James Clark?

A. Clark, yes, he was elected.

Q. Mr. Lundberg, was he elected to that committee?

A. I wouldn't know Mr. Lundberg by name; Jim Clark.

Q. Someone they called "Red Lundberg"?

A. I knew him as Red, but not his last name.

Q. I will ask you that same question about him. Was he elected to the grievance committee?

A. Not that I know of. I didn't pay much attention, but I wasn't much interested.

Q. At that time, I am speaking of this meeting, what was Roy Johnson's job in the shop?

Mr. Nourse: If you know.

Q. (By Mr. Esterman): Of course, if you know.

A. I understood he was in charge of the milling machines.

Q. Did you ever see him over there?

A. Yes, sir.

Q. Often?

A. Often, up until about two weeks before I left and then they put him on the screw machine, turret lathe, I should say.

Q. Who was Jim Clark?

A. He was set-up man on the night shift.

(Testimony of George J. Nelson.)

Q. Was he working with Roy Johnson at that time?

A. No, he was working on a different shift. [94]

Q. Who was his superior?

A. I think he was about that time, he was transferred to the day shift for a couple of days, or maybe I should say a couple of weeks, and then they eventually put him back on nights again.

Q. Up to the time of this meeting I am speaking of?

A. He was at the meeting. It was so divided that the night shift and day shift couldn't attend the meeting at the same time.

Q. Do you know now what Mr. Clark's job was at that time; I am speaking of the first week in January?

A. I am more than sure that he was just a mill operator at the time of that meeting. That is when he was transferred to days.

Trial Examiner Schneider: And not a set-up man?

The Witness: Not a set-up man when he was on days.

Q. (By Mr. Esterman): During the course of your employment with the company, did you ever discharge anyone? A. Yes, sir; several.

Q. Several, did you say? A. Yes.

Q. Did you ever hire anyone for work in your department?

A. No, sir; other than recommend them. They

(Testimony of George J. Nelson.)

had a personnel department. I would recommend people and they would be hired. [95]

Q. That is, if you needed someone, you advised the personnel department and they would send them out to you? A. Yes.

Q. How many people worked under you during the time you were with the company?

A. From 10 to 25, 30, according to how busy we were.

Q. The number varied? A. Varied.

Q. When you left, how many were there?

A. About 18.

Q. Now, with reference to the afternoon of this E. M. A. meeting that you were telling us about, did you on that day have any conversation with Mrs. Goebels?

A. Mrs. Goebels come to see me and told me that they were all being laid off to attend the E. M. A. meeting.

Q. What did you understand her to mean by "they"?

A. The whole shop was quitting work to go over and attend a meeting. That was the first I knew of it.

Q. Do you recall what time of day that was?

A. I should judge that was about 3:30—4:00 o'clock.

Trial Examiner Schneider: What day?

The Witness: The day of the meeting.

Trial Examiner Schneider: You don't know the date of that?

(Testimony of George J. Nelson.)

The Witness: No, I don't. [96]

Mr. Esterman: I might say, Mr. Examiner, we have the minutes here and I think it could be established that it was the first Monday in January.

Q. (By Mr. Esterman): Go ahead.

A. She come to me and told me they were laying them off to go over and attend a meeting. I had no direct word about it and I went to Mr. Cramer about it and I asked Mr. Cramer if that was right. He says, "Yes, they are all going to go over there and attend." I said, "What are we going to do? Shut down?" He said, "Well, yes."

Q. Did you then shut down your operation?

A. Yes, the full crew went over.

Q. And the meeting occupied what time of day? What time was the meeting held and when was it over, if you know?

A. It started at 5:00 o'clock and it was over about a quarter after 5:00.

Q. The E. M. A. meeting? A. Yes, sir.

Q. You mean it lasted 15 minutes, is that what you mean?

A. No, it lasted one hour and a quarter; from 5:00 to about a quarter after 6:00. I will change that; from about 5:30 to half past 6:00, because after the meeting we went right to lunch; to eat our lunch.

Q. The shift changes at 6:00 o'clock?

A. Yes, most of them were over at the meeting too. [97]

(Testimony of George J. Nelson.)

Q. That is, some of the day shift went off at 6:00 and the night shift came on at 6:00?

A. Yes, sir.

Q. And the meeting was held at that time to accommodate both shifts?      A. Yes.

Q. Now, you say that you went to Mr. Cramer; will you relate what your conversation with him was at that time, on this subject of the meeting?

A. I asked him whether it was necessary for them to go over there. I didn't want to knock the shift off to go over and he said, "Yes". I said, "I can't see any use in going over there." He said, "Personally, as an official of the company, I can't say anything because" he said "They should all attend to it."

Q. Was anything else said?

A. He said to go over there and get over there in a body and they may get a raise out of it and keep some other union from coming in on them.

Q. Do you recollect anything else?

A. Not off hand.

Q. All right; by the way, was there anyone else present when you had this conversation with Mr. Cramer?

A. No, because I went over as soon as I heard it. We were all pretty busy. I never talked to any of them when [98] there was anybody else around.

Q. And that was Chester Cramer, the superintendent?      A. Yes.

Q. Do you know whether or not employees were paid or docked for the time spent at the meeting?

A. Docked.



(Testimony of George J. Nelson.)

Q. Were you yourself docked for the time that you spent?      A. Yes, sir.

Q. Did anyone, to your knowledge, refuse to attend that meeting?

Mr. Nourse: May I have the question again?

Q. (Mr. Esterman): Did anyone, to your knowledge, refuse to attend that meeting?

A. Why, yes; I can't at the minute recall his name, but I will think about his name. There was one man who felt that he didn't want to waste his time.

Q. Well, how did you know about that? How did you know that he refused to go?

A. I went around and told them to knock off and punch out and go over to the meeting.

Q. You don't know who it was, do you?

A. I know who it was, but I couldn't tell you his name now.

Q. Was there anyone else that refused to go?

A. He was the only one I know of. [99]

#### Cross Examination

Q. You say you saw Nevins and Johnson post this?

Mr. Nourse: This hasn't been offered yet. Are you [104] offering it?

Mr. Esterman: Yes, I am going to offer it. Shall I offer it now?

Mr. Nourse: I think so.

Mr. Esterman: I will offer it as Board's Exhibit 2; and if there are any objections, I am going

(Testimony of George J. Nelson.)

to show counsel a photograph of the same bulletin which has on it a true copy.

Mr. Nourse: You have examined the witness, Mr. Esterman, as to the instrument. But on something outside the record.

Trial Examiner Schneider: Are there any objections to the admission of Board's Exhibit 2 for identification into evidence?

Mr. Nourse: None.

Mr. Wilson: No.

Trial Examiner Schneider: There being no objection, it will be admitted.

(Thereupon, the document heretofore marked Board's Exhibit 2 for identification, was received in evidence.) [105]

## BOARD'S EXHIBIT No. 2

### Employee's Mutual Association Answers A. F. L.

A.F.L. By Pamphlets has been promising you a lot. It's statements as to working conditions, fair treatment, safety, sanitation and adjustments of grievances is a lot of Hooey, and you all know it.

We have good working conditions, good safety, good sanitation, and have no trouble with adjustments of grievance's, what we are interested in is pay, By pay we mean how much we take home each week, let's see how things have staked up under E.M.A.'s agreement with the management.

1. Our rates of pay are equal to, if not greater

(Testimony of George J. Nelson.)

than the average in the industry in this area, except that in one department in our plant the hourly rate of pay is below the average, in this instance we joined with the management in December, in a request to the War Labor Board that the rate of pay in this department be increased. This application is pending before the board in Washington, D. C.

2. We all know our wages cannot be increased without the consent of the War Labor Board, the management has agreed that if the War Labor Board recommends an increase of the wage scale in the major airplane plants in Southern California that it will join the E.M.A. in petitioning the War Labor Board to make your wages equal those granted in the major airplane plants, no other union can get you a nickle more.

3. The dues in the E.M.A. are 25c a month, A.F.L. dues are approximately 10 times this amount. (They will charge you what they can get.).

Lets see how this effects you, you already have deducted from your pay check at least 10% for war bonds, 5% Victory Tax 1% Social Security, 1% California Unemployment Tax, and at the present time Congress contemplates further 19% withholding tax. This would leave you out of a \$50.00 pay check, \$32.00. If you join the A.F.L. you'll be subject to fines for not attending a meeting and special assessments for the benefit of someone besides yourself and, if the A.F.L. gets in the saddle with a maintenance of membership and check-off

(Testimony of George J. Nelson.)

system you'll have further deductions from your pay check, your dues and the fines and assessments against you, and for what?

The A.F.L. can't get you a cent more. Think it over, is the A.F.L. interested in your welfair, or interested in gouging you to pay their walking delegates and officers.

Think it over, if you have signed an A.F.L. card, send them another postal card canceling the one you sent and give a copy of it. Join the E.M.A. who has been and is serving your interest without paying salaries to anyone. We have a new contract coming up with the management, Before that is signed, it will be submitted for approval by the majority vote of the members of the E.M.A. Get on the wagon, so you can vote.

(Signed — ROY JOHNSON

Pres. E.M.A.

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Q. (By Mr. Nourse): I will show you this. This is a picture of the bulletin board?

Trial Examiner Schneider: Will you mark that?

Mr. Nourse: I will have it marked Respondent's Exhibit 1, for identification.

(Thereupon, the document referred to was marked Respondent's Exhibit 1, for identification.)

The Witness: What is the question on this?

Q. (By Mr. Nourse): Does that look like a

(Testimony of George J. Nelson.)

picture of the bulletin board you saw that posted on?

A. This looks like the oven here, or the wall, either one.

Q. Did you see that A. F. of L. poster there?

A. That was after this was posted.

Q. Afterwards? A. Yes, sir.

Mr. Esterman: What does he mean "this"?

Mr. Nourse: He pointed to the typewritten document [108] which can't be read.

The Witness: The American Federation of Labor sign was put up after this one was put up.

Q. (By Mr. Nourse): Did you see that put up too?

A. No, I seen it up there but not put up. It was there when I left work that night.

Q. Did you see on the bulletin board, or the blackboard as you call it, did you see one of these exhibits No. 2, this instrument in front of you, on the bulletin board? A. Yes, sir.

Q. Did you see the A. F. of L. posters on the same board? A. No, sir.

Q. Never did? A. No, sir.

Q. Never did at any time?

A. No, sir, on the bulletin board. Not to my knowledge, no.

Mr. Nourse: I will offer that as Respondent's Exhibit 2—do you know when it was taken?

Mr. Esterman: No, but I will stipulate to any facts.



(Testimony of George J. Nelson.)

Mr. Nourse: We will just leave it for identification, then. I will ask that this be marked as Respondent's Exhibit 2, for identification.

(Thereupon, the document referred to was marked Respondent's Exhibit 2, for identification.)

Mr. Nourse: You had one forwarded to you and you [109] couldn't find it and I sent you a copy of it, Mr. Esterman.

Trial Examiner Schneider: You are not offering the picture at the present time?

Mr. Nourse: No; I want to get a further foundation laid.

Mr. Esterman: All I know about this is that you sent me a copy of it. I have not seen the original, nor have I asked the machinists. I will ask them now if they know of this letter.

Mr. Nourse: I wish you would search your file for the original letter that was forwarded by Mr. Sparks to you at the request of Mr. Ogran of this Board. I already served notice that it be produced and I ask that the original of that be produced; the original of this letter. There is a copy that was posted.

Trial Examiner Schneider: This is Respondent's Exhibit 2?

Mr. Nourse: Yes, sir. If there is any question about this I ask that Mr. Lea be subpoenaed.

Mr. Esterman: I don't think that will be necessary. I am looking for that letter now.

(Testimony of George J. Nelson.)

Trial Examiner Schneider: May I see that exhibit, please?

Mr. Nourse: If you refer to Mr. Gilfillan's letter of May 31—— [110]

Mr. Esterman: I don't find any signed original. From what I learned I am perfectly willing to stipulate that is what it purports to be, a copy of a letter from Mr. Lea to Gilfillan Bros., Inc. That is correct, isn't it?

Mrs. Volz: That's correct.

Mr. Esterman: That is as to its genuineness and it being a copy of a letter that was sent. My file shows there was a letter sent to our office and that we received such a copy.

Trial Examiner Schneider: That copy doesn't bear a date.

Mr. Nourse: This was taken from the bulletin board.

Mr. Esterman: I will add to that stipulation that it is a copy of a letter that was mailed by Harry Lea. Is he business representative of the I.A.M.?

Mrs. Volz: Yes.

Mr. Esterman: On April 12, 1943 with copies to a number of persons including the NLRB, the War Labor Board, District 94, someone named Mr. McBreen, representative at San Francisco of the I.A.M., H. W. Brown, international president of the I.A.M., and Roy Brown, international vice-president of the I.A.M. That is the full extent of my information.

(Testimony of George J. Nelson.)

Mr. Nourse: May I have the exhibit I just showed you?

Mr. Esterman: Yes. I shall also make a search—  
[111] do you believe that the original signed letter to Mr. Gilfillan was turned over to us?

Q. (By Mr. Nourse): You say the majority and the greater part of the men on your shift were A. F. of L. A. Were A. F. of L.?

Q. Yes.

A. No, you misunderstood me there. They were in favor of.

Q. How did you learn that?

A. Gilfillan has a great grapevine up there; you can learn most anything.

Q. How did you learn it?

A. Through the men. [112]

Q. And during the time that you were in charge of them? A. Yes, sir.

Q. And you heard the discussions of the men?

A. Yes, sir.

Q. By them, and they were in favor of it?

A. Yes.

Q. Did you hear anyone, or did you know of any man on the shift that was a member of the A. F. of L.? A. I don't, no.

Q. Did you then?

A. No, they wouldn't let me know whether they joined, or not.

Q. You never saw an A. F. of L. button on anyone there?

(Testimony of George J. Nelson.)

A. I recall, I think, two men I saw had an A. F. of L. button in all the time I was there.

Q. And that was on your shift, I am talking about? A. Not in my department, no.

Q. On your shift?

A. That would be my shift, but was individual of the other departments.

Q. Men that were working there in the machine shop at the time that your shift was working, did you see A. F. of L. buttons on any of them?

A. I recall seeing two.

Q. Who were they on?

A. I don't know exactly who was wearing them.

[113]

Q. Well, did you see any of those men talking with the others about joining the American Federation of Labor? A. Yes, sir.

Q. And that was while they were working?

A. Yes, sir.

Q. And so that all you did learn then about any union activity was what you heard being discussed between the men on company time?

A. Oh, no, none of it was on company time.

Q. What time was it, then?

A. Supper time, before they go to work or after they would go to work.

Q. You never heard anything on company time?

A. No, sir.

Q. Of any union? A. No, at any time.

Q. You said once in your direct testimony that the men were quitting to go to the union meeting

(Testimony of George J. Nelson.)

and the other time that they were being laid off to go. Which did you mean?

A. Well, being that they were docked for it; I would say they were laid off for it.

Q. You mean—what do you mean by “laid off”?

A. They didn’t go voluntarily.

Q. Did you hear anybody order them to go?

A. Why, yes. [114]

Q. Who?

A. The members of the E.M.A. said they had to go over there to the meeting. Mr. Cramer said that, too.

Q. Said that to whom?

A. To me, to lay the men off and let them go to the meeting.

Q. Didn’t he say to you that the men were going to the meeting and they could go to the meeting?

A. He told me that they had to go to the meeting, wanted everybody over there.

Q. Why didn’t you order this man over there that stayed on his machine?

A. He didn’t want to go. I had no reason—Mr. Cramer at the time was gone. I couldn’t pick him up bodily and force him over there.

Q. He wasn’t docked, was he?

A. No, he kept working.

Q. And those that did lay off and go, weren’t paid for the time they were gone?

A. No, sir.

Q. And you understood that the company couldn’t pay them during that time, didn’t you?

A. In what way?



(Testimony of George J. Nelson.)

Q. While they were at a union meeting.

A. Let me get that more clearly. The company could pay them if they wanted to. There was no reason. [115]

Q. The company didn't want to pay them and that was your understanding, while they were at the union meeting?

A. That's right. [116]

Q. You didn't mean there was only one man in the plant that stayed at his machine the night of that meeting, did you?

A. That, I couldn't say. I wasn't there. I left to go to the meeting. I don't know who stayed in the plant at the time.

Q. Were there men working when you left?

A. When I left?

Q. Yes.

A. Not on the day shift. The day shift left.

Q. The day shift was through for the day, wasn't it?

A. Yes.

Q. And were any of the other men on your shift, not your department, working when you left?

A. I don't know because when I left I didn't know who was still in the building.

Q. You didn't pay any attention to that?

A. That's right.

Q. You had your supper and then went over to the meeting? [118]

A. I went to the meeting first.

Q. So you left before others in the building left?

A. Yes, sir.

(Testimony of George J. Nelson.)

Q. You were one of the early ones at the meeting, is that right? A. Yes.

Q. And you don't know how many remained or stayed at work?

A. There was only one that I know of.

Q. There was one man under you, you mean?

A. Yes.

Q. But how many others, you don't know?

A. I don't know; I wasn't there in the building to find out, to see who did continue to work. [119]

Q. Now, you say you discharged several men. You don't mean you walked up to a man and said, "Go get your time", did you? A. Yes, sir.

Q. Without ever going to the men above you?

A. Yes, sir.

Q. Now, name them.

A. The records will show that. I don't keep a record of it.

Q. Can you name one man that you ever walked up to without first having the permission of either Cramer or Sparks or [121] Walters, and said, "You go get your time, you are through?"

A. Yes, sir, and I had Mr. Walters sign the card out for me. There were no questions asked.

Q. You went to Mr. Walters and said, "I want this man to go"?

A. Told him to make his time up.

Q. Mr. Walters to make his time up?

A. Yes.

Q. You gave directions to Mr. Walters, or asked him to do it? A. I asked him to do it.

(Testimony of George J. Nelson.)

Q. That happened in each case?

A. Yes, sir.

Q. You would go up and you would give a reason to Mr. Walters why you didn't think the man was doing satisfactory work and you asked him to make the man's time up?      A. Yes, sir.

Q. And Mr. Walters would discuss it with you?

A. He would discuss it; he would tell me O. K. and mark him out.

Q. Did he ask why?

A. I told him why; naturally I would tell him why.

Q. The cause?

A. And the cause. He would say, "All right, mark the time out."

Q. And then that went up to the men above Walters, didn't it? [122]

A. I don't know who it went to after Walters signed the card out. The man didn't come back to work.

Q. And that is what you meant when you said you discharged them?      A. Yes.

Q. In other words, you recommended to Walters that they be discharged?

A. It happened that way.

Q. Now, how far was this blackboard or bulletin board from the oven on which you saw this exhibit 2 posted?

A. I should judge 50 feet, yes, 50 feet between the two of them.

(Testimony of George J. Nelson.)

Q. Was that in view of where you were eating lunch?      A. Right between the two of them.

Q. Did you see these gentlemen that you named, Mr. Johnson and Mr. Nevins, post it on both of them?

A. I saw them post it on the oven door, and when I went back there, there was one on the bulletin board, too.

Q. Then, did you go out front to see if there was one on the wall?

A. When I was going home at night I saw it right up there because I had to pass it.

Q. Had any A. F. of L. bulletins been up there in these places?

A. Not at the time they were posted. [123]

Q. At other times did you see A. F. of L. bulletins in these same places?

A. That one slip there a couple of days after.

Q. Let me show you some other slips.

Trial Examiner Schneider: Which slip are you referring to?

The Witness: On that picture there. The one that is taped up on the wall.

Q. (By Mr. Nourse): You saw that on the oven door?      A. On the wall door.

Q. That is on the outside wall?

A. The wall of the building.

Trial Examiner Schneider: You are referring to the A. F. of L. poster which can be seen in Respondent's Exhibit 1 for identification?

The Witness: Yes.

(Testimony of George J. Nelson.)

Q. (By Mr. Nourse): Now, you saw those on the bulletin board, too, didn't you?

A. No, sir.

Q. You saw them on the oven door, didn't you?

A. No, sir, on the wall; that is the only place where I seen them.

Q. Did you ever see one of those on the bulletin board?

Mr. Nourse: I will ask that these be marked for identification. You are familiar with those, Mr. Esterman?

Mr. Esterman: In a general way. [124]

Mr. Nourse: They were in your files. If you want to examine them before——

Mr. Esterman: It is all right, go ahead.

Mr. Nourse: May these be marked in order as Respondent's Exhibits 3-A through H, inclusive, for identification.

(Thereupon, the documents referred to were marked Respondent's Exhibits 3-A through 3-H, incl. for identification.)

Trial Examiner Schneider: We will take a short recess.

(Short recess.)

Trial Examiner Schneider: Let us proceed.

Q. (By Mr. Nourse): Will you look at these exhibits for identification, 3-A through -H inclusive. Will you tell me which of them were posted at the Gilfillan Bros. Inc., plant?

Mr. Esterman: On the walls.



(Testimony of George J. Nelson.)

Q. (By Mr. Nourse): On the walls or bulletin board?

A. Probably all. I saw them around.

Q. Them, or any of them?

A. I couldn't say any one specifically: I never paid any attention to it.

Q. The only one you paid any attention to then——

A. The one on the wall.

Q. (Continuing): ——was Board's Exhibit 2.

A. That is right.

Q. But you did see the A. F. of L. poster up there in the [125] same places that you saw that, and at other places in the building?

A. Yes, sir. [126]

#### Recross Examination

Q. My notes indicate, whether correctly or incorrectly, I don't know, that there was a burring and buffing department in October, and then when Brooks left at 2 p. m. you took over?

A. That was another Brooks that had charge of the burring department.

Q. He was in charge of the burring department?

A. Of the burring department in the day-time.

Q. What was his title, if he had any; do you know?

A. He was foreman of the burring department. Pardon me, could I ask Mr. Sparks if that was his right name?

The Witness: That was Brooks, wasn't it?

Mr. Sparks: I don't know of any Brooks in charge of that department; no.

The Witness: In the burring department? Par-

(Testimony of George J. Nelson.)

don me, Foley. F-o-l-e-y. Yes, Brooks was the one in the shipping department and asked for Mary and Alice.

Q. (By Trial Examiner Schneider): The name should be Foley instead of Brooks? A. Yes.

Mr. Nourse: He was in the shipping department with Mary and Alice?

The Witness: Brooks was the man in the shipping department that asked for Mary and Alice to go up there and go to work for him. Mr. Foley was the man in the burring [135] department.

Q. (By Trial Examiner Schneider): Well now, when was it that the change was made in the burring department resulting in Mrs. Goebels coming in; was that in November or December?

A. November.

Q. Do you recall about what date in November?

A. About, probably around Thanksgiving time. I wouldn't exactly know the date.

Q. At that time, you say the burring department was enlarged? A. They put more help on.

Q. Do you know how many were in that department prior to the time Mrs. Goebels came in?

A. I should judge about ten.

Q. How many were in after she came in?

A. It went up to twenty or twenty-five. [136]

Q. If you know, exactly what duties did Roy Johnson perform?

A. Set-up man on the mills.

Q. And what did a set-up man do? [137]

(Testimony of George J. Nelson.)

A. They set up the machines so the operators could run them; keep checking the work and see that the work is according to blueprints.

Q. What is the relationship between a set-up man and a leadman or foreman?

A. Practically the same thing.

Q. They are about the same thing?

A. Yes.

Q. Then would a set-up man have any authority over the operators of any of the machines he was working on?

A. Any authority?

Q. Yes.

A. Certainly; he was in charge of them.

Q. Would you say that the set-up man was the boss of the operators?

A. Of that department he was.

Q. And they would have to do what he told them to do?

A. Yes, sir.

Mr. Nourse: I would like the Examiner's question to be a little more specific and definite than that. In what regard as to performance of work?

Trial Examiner Schneider: That's right.

Mr. Nourse: As to carrying out——

The Witness: Changing them around and telling them [138] to do this job and that job.

Mr. Nourse: To tell them what job to perform?

The Witness: Yes.

Q. (By Trial Examiner Schneider): In order to get this picture clearly, if the set-up man were to order an operator to do a job in a certain way and

(Testimony of George J. Nelson.)

if the operator refused to do that; could the operator refuse to do that?

A. Well, he would lose his job if he refused to do it.

Q. In other words, he was under the obligation to take orders from the set-up man?

A. Yes. [139]

Q. Now, the poster which you say you saw Nevins and Johnson post was the poster on the oven; is that correct?

A. Yes, sir.

Q. And that was the only one you saw them post?

A. That was the only one.

Q. Now, you testified that with respect to some men you went to Mr. Walters and discussed discharging them?

A. Yes, sir.

Q. And did you say that you recommended to Walters that they be discharged?

A. Yes, sir.

Q. Were your recommendations followed?

A. Yes, sir.

Q. Do you know of any cases where you recommended the discharge of a man and the recommendation was not followed?

A. No, sir. I went to Mr. Walters, and Mr. Walters one or two times there put him on the day shift, changed them off the night shift and changed them to the day shift.

#### Recross Examination—(Continued)

Q. (By Mr. Nourse): When you made these recommendations for discharge, can you recollect what the grounds that you gave were for their discharge?

A. Unsatisfactory work. [140]

(Testimony of George J. Nelson.)

Q. Unsatisfactory work. Did you explain to him what the nature of their work was, what was wrong with their work that made it unsatisfactory?

A. Yes, sir. Either drunkenness, drinking on the job, or——

Q. It was after your statement of those things to Mr. Walters that he followed your recommendation and discharged the men?

A. Yes, sir. [141]

Q. (By Mr. Nourse): As to the setup man, if you had an experienced operator, one qualified, he could set up his own work and the setup man wouldn't pay any attention to that man, would he?

A. Oh, yes.

Q. He didn't set up that man's work, did he?

A. I never had one man that could do that.

Q. I am not talking about that. You made very general statements as to setup men in other departments.

A. Well, I can't say for the others.

Q. You don't know then what Johnson did over his men, in supervising them, do you?

A. Why, no. I took care of my own end of it, and my general belief of what his work was.

Q. That is what I am coming to. You don't know what these [144] other leadmen or setup men did. What you are stating is what you did with the men in your department?

A. In my department, yes.

Q. And outside of that you don't know what the others did?

A. The general line of work, why, certainly I did.



(Testimony of George J. Nelson.)

Q. You don't know how much supervision they gave?

A. I had enough to do on my own end.

Q. That is what I thought. But I am asking you if you know what they did.

A. Yes, I know what they did.

Q. Do you know how much supervision Johnson did give if he had an experienced man under him?

A. He has got to check him all the way through and he was still responsible for that man.

Q. How do you know he was responsible?

A. General practice gives you that knowledge.

Q. You base it on because you were held responsible in your department?

A. Yes, sir.

Q. But you weren't a setup man, were you?

A. I done my own setting up.

Q. But you were a foreman in your department?

A. Yes, sir.

Q. In charge of the whole department?

A. Yes, sir. [145]

Q. Now Johnson was one of three or four leadmen in his department, wasn't he?

A. On different shifts.

Q. What?

A. Three or four on different shifts.

Q. But he had a foreman over him?

A. Yes, sir, and superintendent. He had the night superintendent over him.

Q. Didn't he have a foreman also?

A. Not that I know of. He was the foreman there.

Mr. Nourse: That is all I have.

(Testimony of George J. Nelson.)

Trial Examiner Schneider: Mr. Wilson?

Mr. Wilson: No questions

Trial Examiner Schneider: You may be excused.

The Witness: Thank you.

(Witness excused.)

Mr. Esterman: May we go off the record for a moment, Mr. Examiner?

Trial Examiner Schneider: Off the record.

(Discussion off the record.)

Trial Examiner Schneider: Now, would you make that statement for the record?

Mr. Nourse: During the year 1942 and at the present time there were approximately 500 employees, which would include office employees, as well as operations employees. [146]

Trial Examiner Schneider: Thank you.

Mr. Esterman: And I will state for the record that the Board will stipulate that sometime in June, 1937, an election was held at the Gilfillan plant here in Los Angeles for the bargaining agent, and that on the ballot were the E. M. A., the C. I. O., I don't recall what local and, of course, a neither vote, and in consequence of that election, which was won by the E. M. A., the E. M. A. was subsequently certified as the bargaining agent.

Is that satisfactory?

Mr. Nourse: And that that election was one held under the Labor Relations——

Mr. Esterman: By agents of the National Labor Relations Board.

Mr. Nourse: In accordance with the Act.

Mr. Esterman: In accordance with the Act, and that was in 1937.

Mr. Nourse: In 1937.

Trial Examiner Schneider: Was that a Board directed election?

Mr. Esterman: No, it was a consent election.

Trial Examiner Schneider: A consent election?

Mr. Esterman: Yes. I can furnish the case number.

Mr. Nourse: That was the C. I. O.—I am talking without records, Mr. Examiner, because all of those records [147] burned up, but my understanding is that the C. I. O. had come in and demanded an election from the National Labor Relations Board, and that Gilfillan consented to the holding of the election. If by that you mean it was a consent election——

Mr. Esterman: By consent of all the parties. We can't hold one unless all the parties do consent, and that is the connotation when I say "consent", the parties on the ballot and the company consented. If you want any further facts I can get the old file. Is that satisfactory?

Mr. Wilson: I think that is very satisfactory.

Trial Examiner Schneider: Off the record.

(Discussion off the record.)

Trial Examiner Schneider: You may proceed.

JOHN K. SEMPLE

a witness called by the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): Now, your name is John K. Semple, is it not?

A. That is right.

Q. And you reside at 9547 Olympic Boulevard in Beverly Hills?

A. That's right.

Q. You are at present employed by the Timm Aircraft Company?

A. Yes. [148]

Q. As chief of material; is that correct?

A. That's right.

Q. You were first employed by Gilfillan approximately in the year 1934?

A. That's right.

Q. And continuously thereafter until sometime in 1940; is that correct?

A. No. I think that I left, I think it was in 1939, January, 1939.

Q. Until the first part of January, 1939?

A. Yes.

Q. You are not certain about it?

A. No, I am not.

Q. It was either '39 or '40?

A. Yes, one or the other.

Q. Now, in what capacity were you employed by Gilfillan?

A. I was cost auditor and personnel manager.

Q. Cost auditor and personnel manager?

A. Yes.

(Testimony of John K. Semple.)

Q. Will you please speak up, as I am having a little difficulty in hearing you. Did you continue in that capacity throughout your connection with the company?      A. Yes.

Q. What can you say as to the date of the origin of the E. M. A., approximately? [149]

A. It is naturally very difficult to recollect the exact date.

Q. Do the best you can.

A. It would be sometime previous to that election.

Q. The one I just spoke of?

A. That's right.

Q. That would be early in 1937, then?

A. I would say so, yes.

Q. And was a Mr. Miller the first president,—Mr. Malcom Miller the first president of the E. M. A.?

A. To the best of my recollection, he was.

Q. Was he later succeeded by a Mr. Ivar Thorsen?

A. Yes, I think so.

Q. Can you place the time when that succession took place?

A. It would be sometime towards the end of 1938.

Q. It would be the middle of the year?

A. No, it would be closer towards the end of the year. October, I would say.

Q. Very well. With respect to personnel work, did you have anyone in the company associated with you? Did you have an assistant, for example?



(Testimony of John K. Semple.)

A. Not in personnel work.

Q. To whom did you report? To whom were you responsible? A. Mr. Gilfillan.

Q. Did your job in connection with personnel work consist [150] of hiring people for work in the plant? A. That's right.

Q. Clearing them through your office?

A. That's right.

Q. And also clearing the discharges?

A. That's right.

Q. That is aside, of course, from your cost accounting phase of your work?

A. That's right.

Q. Now, did the E. M. A. hold regular meetings in 1937?

Trial Examiner Schneider: Does this witness know?

The Witness: I wouldn't know.

Trial Examiner Schneider: Is he qualified?

Mr. Esterman: He is the personnel man.

Trial Examiner Schneider: But is he qualified to say whether or not the Association held meetings?

Mr. Esterman: Well, I will ask him this:

Q. (By Mr. Esterman): Did you ever attend any E. M. A. meetings? A. Yes, I did.

Q. How many?

A. At least three, and probably one or two more.

Q. How often were they held, to the best of your recollection?

A. The meetings that I attended? [151]

(Testimony of John K. Semple.)

Q. How frequently were the meetings held, if you know?

A. Well, it would be only—that would be difficult for me to say. I would say they would be held every two weeks.

Mr. Nourse: Well, do you know when they were held?

The Witness: No, I do not.

Q. (By Mr. Esterman): All right. Were these meetings you attended, the three meetings which you attended, were they successive meetings or widely scattered?

A. Not knowing when they held them, I couldn't say that. The times I attended were spaced considerably.

Q. How far apart were they spaced? That is what I am getting at.

A. Oh, two to three months apart.

Q. Now, briefly, for what purpose did you attend these meetings?

A. By invitation of the E. M. A. to address them on various and many subjects.

Q. And at each meeting you attended, I take it you addressed them on one subject?

A. At each meeting, yes.

Q. Do you recall whether there were any meetings where the subject of labor or labor unions or any related subject was discussed?

A. I recall one meeting where the—where I made an effort to explain the Wagner Relations

(Testimony of John K. Semple.)

Act, which was just [152] shortly after its inception.

Q. You mean in 1937, don't you? You don't mean in 1935? A. In 1937, yes.

Trial Examiner Schneider: I take it, you are referring to the time the Act was declared constitutional?

The Witness: Yes.

Q. (By Mr. Esterman): Then is this the only meeting in which the subject of labor or labor unions, or anything related to that subject, was discussed by you?

A. That was the only meeting where that subject would be a topic that I was discussing.

Q. I take it from what you have said, that that consisted of an address on the Wagner Act and what it was, or, at least, what you thought it was, and how it worked, and so on. Is that right?

A. That's right.

Q. Do you know about how many people worked for the company during the years 1937 and 1938? Was the personnel as large as it is now, numerically?

A. No, and there were two peaks there, one in the middle of the refrigerator season and one in the middle of the radio season. I would say the highest we would have would be 300, and sometimes it went down to about 140.

Q. What period do you have in mind now? All the time you were with the company? [153]

A. Yes, that would be a general average.

Q. Did you make it your business to become per-

(Testimony of John K. Semple.)

sonally acquainted with the people that were in the company's employ? That is, generally, all the people that worked there?

A. Not all of them, but I was personally acquainted with a great many of them.

Q. You knew a great many personally?

A. A great many of them.

Q. Did you see them personally from day to day and talk with them?           A. Yes, sir.

Q. Did you spend a lot of time in the plant?

A. Yes, sir.

Q. Were you consulted at the time of the organization of the E. M. A. by anyone with regard to its organization?           A. Yes, I was.

Q. Do you recall by whom you were consulted?

A. To the best of my recollection, Miller, Joel, Axe,—

Q. You are naming employees at that time?

A. Yes. And probably Thorstenson.

Q. In a general way, what was the nature of your consultation?

A. The only—well, they asked for advice as to how to form a union, and the only advice I would give them would be to tell them how to go to the public library and get that [154] information, and I can remember one thing I told them to get was Roberts' Rules of Conduct, and in that general way I would answer questions they would put.

Q. Were you consulted with reference to a place, a meeting place of the E. M. A. in the first instance?

A. No.

(Testimony of John K. Semple.)

Q. Well, where did the E. M. A. first meet, to the best of your recollection?

Mr. Nourse: If you know? I think the only question this witness can answer is: where was the first meeting he knew of held?

Mr. Esterman: All right. I will accept the amendment.

The Witness: The first meeting I knew of was held in the building.

Q. (By Mr. Esterman): Which building, Mr. Semple?

A. The premises of Gilfillan Bros., Inc.

Q. And you place that early in 1937?

A. Yes.

Q. Were there any other meetings held on the premises of the company, to your knowledge?

A. Do you mean meetings——

Q. Of the E.M.A.

A. Exclusively of the E.M.A. where there was no others present? I mean, there were many meetings held by myself and the E. M. A. in the regular contacts that we had. [155]

Mr. Nourse: You mean by the whole of the E. M. A.?

The Witness: No, by groups of the E.M.A., committees of the E.M.A.

Q. (By Mr. Esterman): No, I mean E.M.A. meetings.

A. No, that is the only one of which I have any recollection.

Q. You mean the only meeting you know about,



(Testimony of John K. Semple.)

or the only meeting that was held on the company premises?

A. The only meeting that was held on the company premises.

Q. And do you know where the meetings were held after that?

A. I know where some were held

Q. Where were some held, that you know about?

A. Some were held in a hall on Venice Boulevard, probably half a block east of the plant.

Q. Would that be the Woodmen's Hall?

A. Yes, I think it was the Woodmen's Hall.

Q. Now, who made the arrangements, if you know, for the use of the company premises at this first meeting that you speak of?

A. I did.

Q. And what did those arrangements consist of? Just tell us, briefly.

A. By seeing that the space upstairs was cleared and by getting assurances from these boys that they would properly protect the meeting and allow nobody else up there. Now, I don't know whether I can say I did it now, or not. [156]

Mr. Esterman: Please read that answer.

(The answer was read.)

Q. (By Mr. Esterman): You mean by your statement that you had these men assure you that the attendance would be confined to E.M.A. membership?

A. That's right.

(Testimony of John K. Semple.)

Q. Now, the meetings that you addressed were held where?

A. Twice I think in that Woodmen's Hall, if that is the name, and the other time in a Masonic Temple on Pico, considerably east of the location of the Gilfillan plant.

Q. Did you attend any meetings or a meeting on the premises of the company?

A. I did not.

Q. And, of course, I mean E.M.A. meetings.

A. The particular meeting that I can recollect, I did not.

Q. Now, to whom did you talk concerning the arrangement for the use of the premises of the company for this meeting?

A. Miller and Axe, and perhaps one or two more that I fail to recollect; probably four or five of them.

Q. Now, I know it goes back some time, but can you recall now what was said?

A. Well, the boys wanted to have a meeting, and they didn't have any money, and I didn't know how they could get it, I mean they didn't know where they could get it, and I think I said, "Well, for this time you can use this space [157] that we have upstairs," which was then unoccupied. They had no funds, as I understood it, in the E.M.A. at that time.

Q. I take it, at these other meetings that you addressed, other than the one where you discussed the Wagner Act, your addresses took the form of

(Testimony of John K. Semple.)

general discussion which had nothing to do with labor unions or the Wagner Act, but were just general matters aside from union matters; is that right?      A. That is true.

Q. Were any picnics held for Gilfillan employees during the years 1938 and 1939?

A. Yes.

Q. Was there one held each year?      A. Yes.

Q. Would that be during the summer months?

A. Yes.

Q. Or the fall, or when?

A. There was one held in the summer, and one held later, probably near the end of September. I can't remember which was held which year.

Q. There was one in each of those years?

A. Yes, sir.

Q. Can you recall whether there were any picnics after that, or before?      A. Not before.

Q. You remember just the two? [158]

A. I remember the two.

Trial Examiner Schneider: That was '37 and '38, or '38 and '39?

The Witness: '38 and '39.

Q. (By Mr. Esterman): Now, was there any publicity attached—

Mr. Nourse: Just a moment. I don't think the witness was there.

The Witness: Oh, I beg your pardon. 1937 and '38. I beg your pardon.

Trial Examiner Schneider: He said he wasn't sure whether it was 1939 or '40.

(Testimony of John K. Semple.)

Mr. Nourse: I don't want to trip the witness, but I know he left early in '39.

The Witness: Well, '37 and '38.

Mr. Esterman: He said he wasn't sure.

Mr. Nourse: But he was going to testify to a picnic held in the fall of that year.

Mr. Esterman: That is so.

Q. (By Mr. Esterman): At any rate, there was a picnic the last year you were there, and the one before that? A. That is right.

Q. And you think now it was '37 and '38?

A. That's right.

Q. And I take it, there was some publicity attached to [159] these picnics, that is, with respect to arrangements and notices to employees, and so on? Were there bulletins posted in the plant?

A. Yes.

Q. In connection with the picnics?

A. That's right.

Q. Is that true of both picnics?

A. That is true of both picnics.

Q. Does your recollection serve you as to what the advertising had to say with respect to who was sponsoring the picnic?

A. Well, the first picnic was, as near as I remember it, was Gilfillan Bros. first annual picnic.

Q. And what do you remember as to the second?

A. I would say that in whatever publicity was given to it inside the plant, the name of the E.M.A. was on that publicity.

Q. You are speaking now of the second?

(Testimony of John K. Semple.)

A. Of the second. Whether it was E.M.A. sponsored, I can't recollect the phrasing of it, but the E.M.A.'s name was on that second picnic.

Q. The E.M.A. played a prominent part in it? Is that a fair statement? A. Yes.

Q. Now, did anyone else sponsor it with the E.M.A., any [160] other organization?

A. No.

Q. Do you know how these picnics were financed? A. Yes.

Q. Tell us.

A. The first picnic was financed by Mr. Gilfilan. Now, I say "financed". That doesn't truly state it, because Mr. Sparks at that time was purchasing agent, and he was rather successful in getting us a great number of prizes which would have had to have been financed some other way.

Q. That is from purveyors of goods?

A. From vendors of goods.

Trial Examiner Schneider: Off the record.

(Discussion off the record.)

Trial Examiner Schneider: Proceed.

Q. (By Mr. Esterman): I think that is clear. Now, you were speaking of the first picnic?

A. The first picnic, yes.

Q. That is, there were funds donated by the company and there were prizes which were obtained through the purchasing department and through the kindness and courtesy of the purveyors of merchandise? A. That is right.



(Testimony of John K. Semple.)

Q. And these prizes were given to winners of various events at the picnic? [161]

A. That's right.

Q. Now, with respect to the second picnic, was there any difference in the financing?

A. Yes.

Q. What difference was there?

A. As near as I remember, the E.M.A. expected to pay for all expenses, but their treasury was not strong enough for that, and they were very much disturbed that the standard of the picnic should drop below the previous year. I think I discussed the matter with Mr. Gilfillan and told him that I thought it was a good thing to back these fellows, that they didn't want the standard to drop, and Gilfillan agreed to do that.

Q. You asked him for a financial contribution?

A. Whatever deficit there should be in the picnic, I thing I asked Mr. Gilfillan to meet it.

Q. Did he make such a contribution?

A. He did.

Q. Do you recall to what extent?

A. I can't remember. It was, I think, over \$100 and under \$200. I am sure it was under \$200, but it was considerably less than he had been called upon to meet the previous year. Now, at the same time those prizes I am sure were handled in the same way. I think Mr. Sparks and his assistants got us some more prizes that second year. [162]

Mr. Esterman: I hope I am not going to take any liberties, but there was a fire in 1940, and I am

(Testimony of John K. Semple.)

afraid I am going to put in some secondary evidence. Perhaps later we will be able to substantiate it.

Q. (By Mr. Esterman): Do you know of any other means in which the company made financial contributions to the E.M.A. for purposes other than those connected with picnics?

A. No, I most certainly do not.

Q. I will ask you this question: Were there any vending machines on the premises of the company while you were there? A. Yes.

Q. Do you know anything about how the proceeds from the vending machines, the contents, and I am speaking of the money, was distributed?

A. Yes.

Q. What can you tell us of that?

A. Well, previous to the formation of the E.M.A. those proceeds—there is a certain specified percentage given to the company by the owners of the machines for the use of the premises, and Mr. Gilfillan, as near as I remember it, sent that without any deduction of any kind to the Children's Hospital, or to a children's hospital, to a children's institution.

Q. All right. Then after the E.M.A.?

A. After the E.M.A. was formed, and because it seemed to [163] me that they were constantly short of funds, they came to me and asked me why they shouldn't get the proceeds, as it would materially help their funds.

(Testimony of John K. Semple.)

Well, I went to Mr. Gilfillan, and I can remember him distinctly saying, "Well, the kids would suffer for that." I said, "Well, you send them a check for that." And from that day on that proportion of the proceeds, from those vending machines, was given to the E.M.A.

Q. From that day on, meaning approximately when, Mr. Semple?

A. That would be a very difficult thing for me to recollect. It would be sometime in 1937.

Q. Can you relate it to the time of the election we were discussing? Was it before or after?

A. That would be very difficult for me to recollect that.

Q. Do you know whether it was the latter part of the year or not? Well, I won't press you.

A. Well, I really couldn't remember. I really couldn't remember.

Q. Did that situation obtain at the time you left, that is, with respect to the E.M.A. sharing in the vending machines? There was no change in that?

A. No.

Q. When you left they were still doing that?

A. As far as I know, yes.

Q. How did the company turn over the extra money from the [164] vending machines to the E.M.A.? Was it in currency or by check, or did they give them a key to the vending machines?

A. No. We had nothing to do with the collection of the money. In other words, the owner of the vending machines would send Gilfillan Bros. a

(Testimony of John K. Semple.)

check for their share, and I rather imagine that the cashier, Miss Kemp, gave a check to the E.M.A. Whether she made that check out to the E.M.A., I wouldn't have any knowledge.

Q. Was that a matter of a monthly remittance—

A. Yes.

Q. —or something like that? A. Yes.

Q. From the company to the treasurer of the E.M.A. A. Yes.

Q. Did you know that? I mean, are you testifying from your own knowledge in the matter?

A. Yes, I had some knowledge of it.

Mr. Esterman: That is all.

#### Cross Examination

Q. (By Mr. Nourse): Mr. Semple, these employees' picnics, and I am referring to both of them now, all employees were invited to attend?

A. Plus their wives, and plus their children, and plus everyone they could bring with them.

Q. The families and children and everybody in the plant? [165]

A. No question about that.

Q. Now, at the first one, Mr. Gilfillan personally, now, not the company, bought the beer and sandwiches and everything that was served, didn't he?

A. Well, as far as I am concerned, Mr. Gilfillan gave me the money to finance the picnic.

Q. You didn't go to Miss—what is her name—Kemp, and get a company check? Mr. Gilfillan

(Testimony of John K. Semple.)

gave you the money and you financed the company picnic; isn't that right?

A. Now, I wouldn't be too sure about it.

Q. Isn't it your recollection that it was Mr. Gilfillan's personal check that was given to finance that picnic? I am talking about the first picnic now, before there was any company union or independent union, or any union at all?

A. I couldn't say yes or no to that question. It seems to me that we collected all the bills. I think Mr. Sparks could help me on this. We collected all the bills.

Q. Well, Mr. Sparks is helping you because I get my information from him to ask my questions.

A. It seems to me we collected all the bills. No, that isn't true. We got some money, I think \$100, and we spent that very rapidly, and collected the bills and gave them to Miss Kemp, and either she paid them or she gave us the money to pay them. Now, I am not clear as to whose check was used, or whether we got the cash, or what it was. [166]

Q. It is a long time ago, I know. Now, at the second picnic, isn't it true when you went to Mr. Gilfillan to have him make up the deficit, that he assumed that deficit?

Mr. Esterman: You mean, as distinguished from the company?

Mr. Nourse: Yes, as distinguished from the company.

The Witness: I can't answer that for this simple reason: as near as it comes to my memory now,



(Testimony of John K. Semple.)

I audited the bills of the E.M.A. I mean that the boys at the E.M.A. presented them to me, and I audited a statement, and as near as I recollect, they made the financial settlement that second time, and I knew the actual amount but I didn't have actually the passing of that money to the E.M.A.

Q. (By Mr. Nourse): Now, to this second picnic everybody was invited? A. Yes.

Q. Wives and children, and everybody in the plant?

A. Absolutely. It was a little better than the first one, too.

Mr. Esterman: There were more children, you mean?

The Witness: Sparks tried to catch a greasy pig, and it was quite funny, as I remember that one.

Q. (By Mr. Nourse): You didn't have Gilfilan pitch too? He used to pitch for Stanford.

A. No. [167]

Q. I don't think there is any other question. Oh, the E.M.A. was formed in about what month? Do you remember?

A. If that election was in——

Mr. Esterman: In June.

The Witness: ——in June——well, I am really making a guess, gentlemen, but I would say February of that year.

Q. (By Mr. Nourse): February, or shortly after that? A. Or shortly after that.

Q. Now, it was 8 or 10 months after that, wasn't it, before they were allowed to get their nickles

(Testimony of John K. Semple.)

back out of those cigaret machines, and things, or a part of the nickles back?

A. Well, I would be surprised if it was as long as that, because they were constantly broke. I would be very much surprised if it was that length of time.

Q. Well, do you know what relationship the Bezant Motor Company had to the moneys that came from those machines? Wasn't there an American Legion fund that that money went to for a while?

A. No. Just now it is coming back to me.

Q. I am trying to give you some help.

A. There was a one-armed soldier, a one-armed Legionnaire, and he only had the peanut machines. I remember that. That is the American Legion idea, and the E.M.A. brought in that Coca Cola machine, and that was a motor company, I am nearly [168] sure, that owned that Coca Cola machine.

Q. And Joe Copeland was the one-armed peddler?

A. No, that is another deal. Joe Copeland's uncle came in to sell us something to get money. That is complicated now, with those machines.

Q. Anyway, didn't the first of that start in October of 1937?

A. Well, I can't say. I would think earlier than that. I can't say. I do not have a record, and I can't say.

(Testimony of John K. Semple.)

Q. Didn't the checks in those months run about three to four dollars a month, the income, or do you remember?

A. No, they ran more than that. I remember that Coca Cola machine ran considerably more than that. I would say \$12, or some figure such as that.

Q. And you don't know whether or not any of the E.M.A. men made contacts with these people that were selling them, to see as to the brokerage on the machines? A. No.

Q. Or the complaints, or stuff like that? You don't know what part they took in the operation of the machines? A. No.

Mr. Nourse: That is all.

Trial Examiner Schneider: Mr. Wilson?

Mr. Wilson: I have no questions. [169]

#### Redirect Examination

Q. (By Mr. Esterman): What else did they vend besides peanuts and Coca Cola? Any other products?

A. Chewing gun and, or, I don't know, a lot of stuff. [170]

Trial Examiner Schneider: Since it is probably an urgent matter, I think we would probably have to. First, I have several questions I would like to ask Mr. Semple.

Q. (By Trial Examiner Schneider): Mr. Semple, at the time the E.M.A. was formed, was there any other labor organization active at that time?

A. No, not to my knowledge.

(Testimony of John K. Semple.)

Q. When did the C. I. O. first make its appearance, if you recall?

A. Well, there was a peculiar circumstance attached to that. It centered around a man. The first knowledge I had that the C. I. O. was in the plant at all was around a man.

Q. Was when?

A. Was around a certain man. It would be around that time. It would be very close to the time that the E.M.A. was formed, that the first activity that I knew anything about by the C. I. O. came to my attention.

Q. As you recall, which activity took place first? The activity on the part of the E.M.A. or the activity on behalf of the C. I. O., or were they more or less simultaneous, you say?

A. They were more or less simultaneous.

Q. You couldn't say that one preceded the other?

A. No, I couldn't honestly say that. [171]

Q. At that time, when the C. I. O. came in, did it ask for the right to use the company premises, or things of that nature?      A. No. [172]

## GEORGE M. HINES

a witness called by the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. Esterman): Your name is George M. Hines, is it not? A. That's right.

Q. And you live at 2848 West Ninth Street in Los Angeles? A. I do.

Q. You are now employed, are you not, by the Pacific Aviation Company? A. Yes.

Q. In Los Angeles?

A. Yes, at 927 Sycamore.

Mr. Nourse: That is your place of employment?

The Witness: Now, yes.

Q. (By Mr. Esterman): You are employed there in what capacity?

A. Milling machine operator.

Q. You went to work for Gilfillan in September, 1941? [173] A. Yes.

Q. And worked there until when?

A. March 2, 1942.

Q. March 2, 1942? A. Yes.

Q. Did you go back to work there again?

A. I quit at that time.

Q. Oh, you quit in March of 1942 and went back to work again? A. On June 13, 1942.

Q. And worked that time until—

A. Until April 30 of '43.

Q. Of this year? A. Yes, sir.



(Testimony of George M. Hines.)

Q. Did you become a member of the E.M.A. when you went to work for the company?

A. Yes, I did.

Q. Can you relate your joining the E.M.A. to the time you first went to work? In other words, how soon after you went to work?

A. Oh, perhaps a couple of months.

Q. Do you recall how you happened to become a member?

A. Why, yes. One of the employees came around and asked me to join the company union. [174]

Q. Now, you know Roy Johnson, of course, the president of the E.M.A.?

A. Yes, I do.

Q. At the time that you left the company, that would be May 1, 1943, what work was he doing, if you know?

A. He was foreman of the swing shift in the milling department, in the same department that I was in.

Q. That would be what hours, when you speak of swing shift?

A. Well, they have three shifts, all twelve hours, the regular night shift, and the regular day shift, and the swing shift, which relieves the day shift and the night shift.

Q. Well, I have succeeded in confusing myself more than ever. Tell us what the swing shift was, what hours the swing shift works?

A. Well, they worked, they relieved the day shift on their days off.

(Testimony of George M. Hines.)

Q. And the day shift worked two days and was off then for two days?

A. And, also, the night shift works the same time, and the swing shift relieved both the day and the night shift.

Q. In other words, the day and night shifts each worked [176] two whole days or two whole nights, as the case may be?

A. No, we have a straight night shift and a straight day shift. In other words, I worked straight nights, worked two nights and had two nights off.

Q. And the day crew worked——

A. Two days on and two days off, and the swing shift——

Q. The swing shift takes up the gaps in both instances?      A. Yes, sir.

Trial Examiner Schneider: These are 12-hour shifts in both instances?

The Witness: Yes.

Q. (By Mr. Esterman): Now, you state that Roy Johnson was the foreman of the swing shift milling department. Do you recall for how long a period prior to your leaving the company he so acted?      A. Several months, 8 or 10 months.

Q. Before you left the company he acted in that capacity?      A. Yes.

Trial Examiner Schneider: Is that prior to the first time he left the company, or the last time with the company?

The Witness: That is prior to—well, he was

(Testimony of George M. Hines.)

taken off of mills there shortly before I left the last time, possibly 6 or 7 weeks, or almost two months there.

Trial Examiner Schneider: He was taken off the milling department a short time before? [177]

The Witness: Along about the time the union activities came in the plant.

Trial Examiner Schneider: Around February, 1943?

The Witness: Yes, they took him off the milling department and put him in the lathe department.

Trial Examiner Schneider: And prior to that time he had been foreman for some 8 or 10 months, you say?

The Witness: Yes, sir.

Q. (By Mr. Esterman): Well, then, just before you left, that is, for a period of time just before you left, that is, immediately prior to your leaving, he wasn't acting as foreman of the milling department swing shift crew, but he was working on a lathe? A. On a turret lathe.

Q. And he had been doing that?

A. And also handing out some supervision to the man who relieved him.

Q. But aside from doing that——

A. He wasn't a foreman. The fellow that was acting in his place on the mills was very irresponsible.

Q. But I am referring specifically to the time early in February, let us say, at the time you left. That would be February, March and April.

(Testimony of George M. Hines.)

A. Early February.

Q. And those last 11 or 12 weeks of your employ he was [178] engaged in working on a lathe? By "he", I mean Johnson. A. Yes.

Q. And before that——

A. Before that he was a foreman.

Q. Of the swing shift?

A. Of the swing shift.

Q. In the milling department?

A. That's right.

Trial Examiner Schneider: Was he demoted then?

The Witness: Well, I would say, yes, he was.  
[179]

Q. (By Mr. Esterman): Just to refresh my recollection, when did you say you left the company?

A. I left the company the last day of April of this year.

Q. Now, at that time who was your foreman?  
[190]

A. Mr. R. C. Miller was my immediate foreman.

Q. Were there any others? Did you have any other foremen?

A. General superintendent or night superintendent, Mr. Walters.

Q. What was Miller the foreman of?

A. Milling department.

Q. Prior to working under Miller, did you work under anyone else? A. Yes, James K. Clark.

(Testimony of George M. Hines.)

Q. What was he the foreman of?

A. Milling department, night shift.

Q. Same department night shift? A. Yes.

Trial Examiner Schneider: Was Miller in the day shift?

The Witness: Miller was on the night shift; formerly Mr. Clark was on that shift and Miller was made the foreman and Mr. Clark was transferred to days.

Q. (By Mr. Esterman): Do you recall when that change was made with connection to the foreman?

A. They made that change about the time they changed Mr. Johnson over to the turret lathe about that time.

Q. Can you fix the time, approximately when?

A. Well, I should say along the latter part of February or early March.

Q. To your knowledge, did James Clark have any connection [191] with the E.M.A.?

A. Yes, he did.

Q. What was his connection?

A. He was elected grievance man.

Q. Did you ever take up any grievances with him yourself?

A. Yes, I asked him for a raise; he was my foreman.

Q. More than once? A. Yes, several times.

Q. How many times? A. Several times.

Q. What did he tell you?



(Testimony of George M. Hines.)

A. Well, he said he would recommend me; I would have to see Mr. Chester Cramer.

Q. (By Mr. Esterman): Now, you were aware of the fact that there was considerable A.F.L. organization or activity in and around the Gilfillan plant beginning around the first part of January, of 1943, were you not? A. Yes.

Q. As a matter of fact, you took part in that?

A. I did.

Q. To what extent did you participate?

A. Well, I was quite heavily engaged in union activities. [192]

Q. Well, tell us what you did.

A. Well, I wrote memberships and acted as a representative of the A.F.L. in the shop there as a steward.

Q. Were you shop steward? A. Yes.

Q. Did you——

A. I wrote probably close to a hundred members.

Q. How many people did you talk to during the course of your organizational work?

A. Oh, a couple hundred or more.

Q. Were they concentrated in any particular shifts, on all shifts, or what? A. All shifts.

Q. In the main I expect they were on your own shift; is that right? A. Mostly, yes.

Q. And you would contact them before and after hours and during the rest periods?

A. During the rest periods, before starting to work and after work.

(Testimony of George M. Hines.)

Q. Do you know about how many people you signed up with the A. F. of L.?

A. Oh, close to a hundred. [193]

Q. Well, you have testified that you became a member of the E.M.A. shortly after you were employed; is that right? A. Yes.

Q. Did you understand the E.M.A. had a contract with the company?

A. Yes, I understood they had a contract, but I—

Q. Did you ever see it? A. No.

Q. Did you ever see a copy of the constitution of the E.M.A.? A. No, sir.

Q. Or the by-laws? A. No, sir.

Q. Do you know anybody in the shop who has seen a copy of the constitution? A. No.

Q. Or the by-laws? A. Nor the by-laws.

Q. Or any contracts with the company?

A. No.

Q. Do you know whether any copies of those documents were distributed in the shop among the employees?

A. Not during the time that I was there. [201]

Q. There has been some testimony about the collection of dues for the E.M.A. and the signing up of members by a tool crib man named Bucknell. Now, what was your observation in that connection?

A. Well, along there at the first part of March I went up to the tool room on business. I forget just now what it was, to get something, a tool of

(Testimony of George M. Hines.)

some sort, and Bucknell stated that he was getting up a list that he was going to turn over to the War Man Power Board, War Production Board, something of that nature, and he wanted to know if I had joined the E.M.A. organization, and he had a list there——

Mr. Nourse: What year is it?

The Witness: This year.

Q. (By Mr. Esterman): He wanted to know what, Mr. Hines?

A. He wanted to know if I had signed and joined this list that he had there representing the E.M.A., he was getting up a list, he said, he had to turn in the next day to the War Board.

Q. Well, did you ever see him collect any dues from any of the employees for the E.M.A.?

A. Yes. He came around to the machines while the men were working, during working hours, collecting money.

Q. Did he do that frequently?

A. Often, yes.

Q. Well, how often, in your judgment?

A. Once a month at least. [202]

Q. Did he collect dues at the tool crib?

A. Yes.

Mr. Esterman: That is all.

#### Cross Examination [203]

Q. When did you become a member of the A. F. of L.?

A. In February.

Q. In February of 1943?

A. That's right.

(Testimony of George M. Hines.)

Q. And from that time on you wore continually in the shop an A. F. of L. button that said you were shop steward, did you not? A. Yes.

Q. And you had that on the day you said this Mr. Bucknell asked you to sign some E.M.A. papers, is that right? A. Yes.

Q. And this paper he asked you to sign was some list to be presented to the War Man Power Board?

A. He so stated, yes.

Q. Did he say what it was for; in what regard?

A. No, he was very mysterious about it. [204]

Q. Did you look at it?

A. Just glanced, that is all.

Q. Well, what did it say?

A. I just glanced like I look at that note there. I couldn't tell you what it said.

Q. Did you sign it? A. I did not.

Q. Was it because of something that was stated in the instrument that you didn't sign it?

A. No, because I knew he was the representative of the E.M.A. and I certainly wasn't going to sign anything that he had.

Q. You don't know whether it had anything to do with the E.M.A. or union business or whether it was something that the War Man Power Board required from Gilfillan Bros., Inc.?

A. He led me to believe it was a part of the E.M.A. organization.

Q. Just what did he say; what did he say the instrument was?

(Testimony of George M. Hines.)

A. He said he had to have this list turned in; names of members of the E.M.A.

Q. To the War Man Power Board?

A. Yes.

Q. Did he say who had required it of him?

A. No.

Q. Did he give you the impression that the War Man Power Board had asked for it from him? [205]

A. Yes, he did.

Q. And that is required the signatures of members of the E.M.A.? A. Yes.

Q. Were there other signatures on it when you saw it?

A. Yes, there were several names on the paper. [206]

Q. Did you ever ask to see the constitution and by-laws of the E.M.A.? A. Yes.

Q. Who did you ask? A. James K. Clark.

Q. Who is he?

A. He was at that time grievance man, my foreman.

Q. What dates did you ask him?

A. I don't recall exactly the date.

Q. You mean he was the lead man on your shift? [207] A. He was my foreman.

Q. Foreman? A. Yes.

Q. All right; you don't remember what date? How long before you quit?

A. I don't remember exactly; it was while he was my foreman, before he was transferred on the days.



(Testimony of George M. Hines.)

Q. He was transferred on to days when he went on the grievance committee, wasn't he?

A. He was grievance man while he was foreman at nights.

Q. What did you say to him?

A. I asked him about a raise. I asked for a transfer on to days and he said he didn't see how it could be done and then two or three days later, some time after that, Mr. Hall, the man who took Mr. Johnson's place——

Q. I thought this was a Mr. Hall you were talking to all the time. I asked you what you were saying to him about seeing the by-laws and constitution?

Mr. Esterman: I thought you said Clark.

Mr. Nourse: Maybe I did.

Q. (By Mr. Nourse): I asked you what you said to Mr. Clark about the constitution and by-laws. Will you answer that question?

A. I asked him if he ever had seen it and he said no.

Q. Is that all you asked him? [208]

A. Well, I asked him, I don't recall, I probably asked him several things about that.

Q. At that time you were no longer a member of the E.M.A.?      A. No.

Q. You didn't mention that?      A. Never.

Q. Did you ever mention it to him?

A. Never.

Q. How did you happen to ask to see a copy of the constitution and by-laws of the E.M.A.?

(Testimony of George M. Hines.)

A. He was a grievance man for the E.M.A.

Q. But you weren't a member; why did you want to see them then?

A. I was entitled to; I was an employee there and I was entitled to know what is going on.

Q. You had joined the E.M.A. during your first period of employment? A. Yes.

Q. Did you ever ask to see them then?

A. No, but I talked to several men around there who had and they never had seen it.

Mr. Nourse: I ask that the latter part be stricken out. I asked if he was the man who had asked to see them.

Trial Examiner Schneider: Will you read the question and answer, please? [209]

(The record was read.)

Trial Examiner Schneider: Strike everything after the word "No."

Q. (By Mr. Nourse): I think you testified in direct examination that you paid one month's dues; is that correct? A. Yes.

Q. And that you were never asked again for dues; is that correct?

A. Yes, sir, I was asked for dues.

Q. When?

A. Well, when he went around to collect the dues he approached me the same as he did with the rest of the men.

Q. How many times were you ever asked for dues? A. Several times.

(Testimony of George M. Hines.)

Q. Well, by several times, do you mean two, three, four, five?

A. I mean more than once or twice.

Q. More than three or four?

A. Three or four, or five times.

Q. All right. Now, you joined the E.M.A. in about November, I take it, you said two months after you first came to the plant, November, 1941?

A. About that time.

Q. And at that time you paid 25¢ when you joined; is that right? [210] A. Yes.

Q. How long after that was the first time that you were asked for dues?

A. I don't recall exactly, but a month or so probably after that.

Q. And that was by Mr. Bucknell?

A. No, it was some other representative there of the E.M.A.; that was before Bucknell's time at the company.

Q. Do you remember who it was or where it was?

A. No, I don't remember, it just slips my mind.

Q. Do you remember where?

A. At Gilfillan.

Q. Some place at the plant?

A. No, in the machine shop at the plant, yes.

Q. How long after that did you pay it then?

A. No, I didn't pay it.

Q. How long again was it before you were asked for any dues?

A. It was their habit to come around at least once a month.

(Testimony of George M. Hines.)

Q. Well, you were there until March; you were asked every month until March, 1943?

A. I can't recall whether it was every month, but they came around about once a month.

Q. And they never asked you when you were sitting around eating lunch or entering the plant, it was always at the machine? [211]

A. Always on Company time.

Q. You would see the man when you were at lunch, but he wouldn't ask you; he would always come up to the machine and ask you?

A. That's right.

Q. When you came back in June of 1942 did that continue? A. Yes, that continued.

Q. And who was that who solicited dues from you then; Mr. Bucknell? A. What date?

Q. Well, beginning with June, that is when you came back, June 13; you fixed the date.

A. Well, yes, it was Bucknell then.

Q. And did that continue right up until April, 1943? A. Yes.

Q. Even though you were wearing an A. F. of L. steward's button he would come up and ask you for dues for the E.M.A.? A. That's right.

Q. And what would you say?

A. Naturally, I told him no.

Q. You said, "No"? A. Yes.

Q. Nothing else? A. No.

Q. What was it you said that Johnson became foreman on the [212] swing shift of the drill press operators or was it drill press?

(Testimony of George M. Hines.)

A. Drill press, I thought it was milling machines.

Q. I meant milling machines; I asked you which one you said. It was milling machines then, when was it you said he became foreman?

A. When was it; let me see. I don't remember exactly when it was but probably eight or ten months previous. He was foreman for probably eight or ten months there before I quit.

Q. You quit in April? A. Yes.

Q. That would be four months in 1943?

A. Early part of 1943 and latter part of 1942.

Q. It was back as far as June, you think, or July or August, 1942 to the best of your recollection?

A. Well, I went on nights first along the first of July. When I went back to work for the company I worked two weeks days and then I went back nights the first of July.

Q. Was he still acting as foreman when you left?

A. No.

Q. How long before that had he changed over?

A. They changed him there a couple of months previous to the time I left.

Q. The fact is he was switched in January, 1942, wasn't he; or was it 1943?

A. No, it was after that. [213]

Q. Now, who appointed you shop steward?

A. The organizer for the A. F. of L.

Q. Mr. Haag? A. No, Mr. Hammond.

Q. You knew a Mr. Haag in the plant, didn't you? A. Yes, I knew Mr. Haag.



(Testimony of George M. Hines.)

Q. And wasn't he organizing for the A. F. of L., also at the same time?

A. He was committee man.

Q. He was A. F. of L. committee man? [215]

A. Yes.

Q. And did you report to him?

A. Yes, we collaborated. [216]

Q. (By Trial Examiner Schneider): What were the duties of Mr. Clark who was foreman?

A. What was the question, please?

Q. What were the duties of Mr. Clark while he was foreman? Describe as specifically as you can specifically what he did?

A. He designated the work that was to be set up on the machines, also set the work up. I answered to him exclusively.

Mr. Nourse: I couldn't get the last of that.

(The record was read.)

Q. (By Trial Examiner Schneider): You were under Mr. Clark? A. Yes.

Q. Did you take orders from him? [221]

A. Yes.

Q. Were there any other persons who were also under Mr. Clark? A. Yes.

Q. How many?

A. Well, from four to eight, it varied at different times.

Q. As I understand it, you were employed in the milling department, not in the drill presses?

A. I was employed in the milling department, excepting when I first went to work for them and

(Testimony of George M. Hines.)

then I was working on drill presses. My first period of employment that was. The second period of employment I went on mills and stayed there.

Q. I am referring to the time that you were under Mr. Clark? A. That's right.

Q. Did you consider Clark to be your boss?

A. I did.

Q. Do you know whether the other persons you have mentioned as being under Clark considered him to be their boss? A. Absolutely.

Q. Do you know whether anyone was ever discharged by Mr. Clark?

A. I don't recall of anybody being discharged by him, no.

Q. Now, when you spoke to Mr. Clark with reference to a raise, did you speak to him in his capacity as foreman, as you [222] have termed it?

A. Yes.

Q. Or did you speak to him in his capacity as a member of the grievance committee of the E.M.A.?

A. Both, first as my foreman and after as grievance man.

Q. Was it necessary that you take a request for a raise first to your foreman? A. Yes, sir.

Q. Do you know if it was necessary for him to approve it before you got the raise?

A. Yes, sir.

Q. Now, I believe you testified that you were docked in your pay for attending the E.M.A. meeting. A. Yes, sir.

Q. When was that meeting?

(Testimony of George M. Hines.)

A. Well, it was in February, the exact date I don't remember; but I got the check stub at home.

Q. What in general took place at the meeting?

A. Election of Grievance men, that was the main issue. [223]

Q. Did you hear Mr. Nelson testify yesterday?

A. Yes, sir.

Q. Mr. Nelson also testified with respect to an E.M.A. meeting where he said a grievance committee was—as he understood it, a grievance committee was elected. Do you know whether or not the meeting to which you refer is the same one to which Mr. Nelson referred?

A. The same. It is the same.

Q. I notice that he placed the time of that as about the first week in January. What is your best recollection as to when it occurred?

A. I think it was in February.

Q. In February. You are sure there were not two meetings, one in January and another in February?

A. There could have been.

Q. There couldn't have been?

A. There could have been. As a matter of fact, I think they had a meeting in January.

Q. I see. Now, you stated you were docked in your pay for attending that meeting?

A. Yes, sir.

Mr. Nourse: I didn't understand him as meaning this year, but meaning during the first part of his employment, that that is what he referred to in that. Or am I wrong?

(Testimony of George M. Hines.)

The Witness: You are wrong. [224]

Mr. Nourse: Oh, I see. I misunderstood the witness.

Q. (By Trial Examiner Schneider): You are referring now to the meeting in February——

A. Yes, sir.

Q. ——concerning which you testified?

A. Yes, sir.

Q. And you were docked for attending that meeting? A. Yes, sir.

Q. And that meeting took place during working hours? A. Yes, sir.

Q. About what time?

A. From about 5:30 to 6:30 P. M.

Q. Were employees excused to attend it?

A. Yes, sir. They closed down all the machines, practically all the machines, around 5:30, sometimes a little earlier than that.

Q. How did you learn employees were excused to attend the meetings?

A. Well, I was there all the time.

Q. Well, what happened? How was the information conveyed to you?

A. From my own observance.

Mr. Nourse: I didn't get that.

(Answer read.)

Q. (By Trial Examiner Schneider): Didn't anyone tell you [225] that you were either to be excused or were to shut down your machine in order to attend that meeting?

(Testimony of George M. Hines.)

A. You see, we were just coming to work at that time.

Q. Oh, this was during a change of shifts?

A. No, not necessarily so. The meeting was held from 5:30 in the evening until 6:30. The men were supposed to work until 6:00.

Q. The day shift were to work until 6:00 and then the night shift came on?

A. The day shift worked from 6:00 A. M. to 6:00 P. M. We were to go to work at 6:00 P. M., and, in other words, it was a half hour on their shift and a half hour on our shift.

Q. The meeting started at about 5:30, you say?

A. Yes, sir.

Q. Don't you recall how you were notified to leave your work and attend that meeting, if you were?

A. Yes. The different foremen in the shops had instructed the men to attend the meeting.

Q. Do you know that of your own personal knowledge?

A. Yes, sir.

Q. What foreman? Did any foreman inform you?

A. Not directly, but that was the word of mouth around the shop, to attend the meeting.

Mr. Nourse: Then I ask that all this testimony that foremen instructed the men to attend the meeting be stricken [226] out as pure hearsay.

Q. (By Trial Examiner Schneider): Did you hear any foremen give instructions to shut down the



(Testimony of George M. Hines.)

machines or state to employees that they would be excused from work in order to attend the meeting?

A. Yes. [227]

Cross Examination

Q. (By Mr. Nourse): Now, I will ask you this: the Trial Examiner asked you if this took place during working hours. The plant was running 24 hours a day then, was it not? A. Yes.

Q. So there was nothing but working hours in which meetings could be held. Now, what foremen instructed you or did you hear say that workmen would be excused to attend the meeting?

A. Mr. Clark.

Trial Examiner Schneider: Mr. Clark?

The Witness: Yes.

Q. (By Mr. Nourse): Where did he say that? In whose presence and where did he say that?

A. Well, he come around to the operators there on the [228] machines and he said that.

Q. Did he say that anyone who wants to go to the meeting can lay off?

A. He said the meeting is being held over at the hall.

Q. Those were his words, "The meeting is being held over at the hall?" A. Yes.

Q. As a matter of fact, a bulletin had been placed on the board by the E.M.A. saying a meeting would be held from 5:30 to 6:30 on this night in that hall; isn't that true? A. Yes.

Q. And all the foreman said is, "The meeting is going on now?"

(Testimony of George M. Hines.)

A. Words to that effect, yes, "The meeting is on."

Q. Now, who told you that it was necessary to take up with your leadman the matter of a raise?

A. That had been the procedure in the plant, to ask your foreman for a raise.

Q. And you would be told also, if you were dissatisfied, you could go to the man in charge in your department, weren't you, to Walters on one shift or Cramer on the other?

A. Well, Mr. Cramer. It seems as though he had the authority to give all raises. You had to go through your immediate superior first.

Q. Well, you would go to him and ask for a recommendation as to your work and then you would go to Cramer to ask for [229] your raise, isn't that right?

A. Well, that was the procedure. I asked Mr. Walters. He had the same capacity at night time.

Q. In other words, you would tell your leadman you were going in to ask for it and asked for a recommendation as to the kind of work you were doing and then you would go to Walters or Cramer to ask for your raise?

Mr. Esterman: Just a minute. I didn't want to interrupt, but if counsel is going to sum up his testimony, then let him sum it up correctly.

Mr. Nourse: I am not summing up. He calls them foremen and I call them leadmen.

Mr. Esterman: He didn't say anything about leadmen. He said foremen.

(Testimony of George M. Hines.)

Mr. Nourse: Well, we will call them by name, although I don't think the witness' conclusion as to what they are is any better than mine.

Mr. Esterman: I agree with that.

Mr. Nourse: We will call him Mr. Clark.

Q. (By Mr. Nourse): Your procedure was you would go to Clark, for instance, if he were your foreman or leadman, whichever you want to term it, and say that you were going to ask for a raise and asked him to give you a recommendation on the kind of work you did, and then you would go to Cramer or Walters, whichever was the head of the department, and ask for [230] your raise?

A. You asked your foreman and then he recommended you, and whether or not you were to get it, and he was supposed to handle that and he was supposed to ask Mr. Walters or his next superior.

Q. Did you go to Walters?

A. I asked Mr. Clark first.

Q. And then went to Walters?

A. Then I asked Mr. Walters.

Q. And then you asked Mr. Cramer?

A. I worked nights all the time.

Q. You didn't see Cramer?

A. Yes, I have seen him.

Q. Not officially?

A. No. He would come down once in a while.

Q. And you worked under Walters as the boss of that department; didn't you?

A. Certainly.

Mr. Nourse: I think that is all. [231]

(Testimony of George M. Hines.)

Recross Examination

Q. (By Mr. Nourse): Did you post the A. F. of L. notices on the bulletin board?

A. Some I did, yes. [232]

Q. (By Mr. Nourse): Is this one that you posted there, Respondent's Exhibit No. 1?

Trial Examiner Schneider: Referring to the—  
Mr. Nourse: Photograph.

Mr. Esterman: The picture of the A. F. of L. bulletin.

Mr. Nourse: Yes.

The Witness: No, sir, I did not.

Q. (By Mr. Nourse): You saw that posted there? A. I did not.

Q. You never saw it? [233] A. No, sir.

Q. Did you see any of these bulletins?

A. I have seen bulletins like that handed out outside by bill form, but not on the bulletin board.

Q. Now, I will show you Respondent's Exhibit 2, for identification, and ask you if you posted that on the bulletin board there?

A. No, sir, I did not.

Q. Did you see it there?

A. There was some letters of a different description than this. This is not the letter. That is a copy of one that might have been on there.

Q. Well, did you see a letter such as this, of which this is substantially a copy, on the board there? I am not asking you to verify that this is an exact copy of the one you saw, but, in substance, does that appear to be the same?

(Testimony of George M. Hines.)

A. I have seen a letter similar to that on the board, yes,——

Mr. Nourse: I will not offer this as Respondent's——

The Witness (Continuing): ——on the bulletin board, but it wasn't——

Mr. Nourse: That photograph isn't the bulletin board there. That is the wall of the building.

The Witness: Yes, I observe that.

Mr. Nourse: I offer Respondent's Exhibit No. 2 in evidence. [234]

Trial Examiner Schneider: Any objection?

Mr. Esterman: For the record, I object to Respondent's Exhibit 2 on the ground, first, that there is no proper foundation laid; on the further ground that it is immaterial and irrelevant, and I haven't heard any purpose stated for the introduction of this document that goes to the issues in this case. Suppose it was posted.

Mr. Nourse: Do you withdraw the charge then that we discriminated in the use of the bulletin board between the E.M.A. and the A. F. of L.?

Mr. Esterman: Is that the purpose?

Mr. Nourse: That is a purpose, and one purpose is enough.

Mr. Esterman: Well, will you state your other purposes, if there are any?

Mr. Nourse: I don't think I am called upon. I offer it for any purpose material to this case. I don't know what your whole case is yet. I am not going to be limited. If it is relevant for a certain



(Testimony of George M. Hines.)

purpose, it is relevant for all. Here you have made a charge in your complaint of direct discrimination.

Mr. Esterman: Well, I have stated my objection.

Trial Examiner Schneider: Any other objections?

(No response.)

Trial Examiner Schneider: The objection is overruled. It may be admitted. [235]

(Thereupon, the document heretofore marked Respondent's Exhibit 2, for identification, was received in evidence.)

#### RESPONDENT'S EXHIBIT No. 2

To the Employees of Gilfillan Bros. Inc.

(The following is copy of our letter to  
Gilfillan Bros, Inc.)

Gilfillan Bros, Inc.,  
1815 Venice Blvd.,  
Los Angeles, California

Gentlemen:

On February 23, 1943, this organization, as preferred collective bargaining agent of a majority of employees in your plant, requested an appointment to discuss wages, hours and conditions of employment.

Failing to secure such an appointment, on February 27, 1943, we petitioned National Labor Relations Board, Twenty-first Region. to certify this

(Testimony of George M. Hines.)

Union as bargaining agent. However, on March 8, certain actions defined by the National Labor Relations Act as "unfair labor practices" compelled us to file charges against the company, of violation of Section 8, subsections (1), (2) and (3) of the Act. Rules of Board procedure then required us to withdraw, temporarily and without prejudice, the petition for certification.

Please be advised: that District Lodge #94, in behalf of Lodge #311, International Association of Machinists, is in fact the preferred collective bargaining agent of a majority of the employees in the bargaining unit defined in our petition; and that upon disposition of the unfair-practice case, if necessary that petition will be re-filed. That the "Employees' Mutual Association" is not, in fact or in the view of the Board, the agent of the employees. And therefore, that collective bargaining between the Company and the Employees' Mutual Association would be without legal force and effect. Any such bargaining coming to our knowledge will be protested by this organization, to the National Labor Relations Board, National War Labor Board, and/or other appropriate government agency.

Very truly yours,  
(Signed) HARRY LEA,  
Business Representative

(Testimony of George M. Hines.)

Q. (By Mr. Nourse): What bulletins did you post on the bulletin board?

A. Oh, I have posted some little folders, A. F. of L.

Q. Have you copies of them?

A. Well, no, I haven't.

Q. Were they a type of application to permit the A. F. of L. to represent the employees? Were they similar to the postal card or this card (indicating) that is attached to this exhibit?

A. No, it wasn't similar to that at all. It was a regular pamphlet like.

Q. A pamphlet? A. Pamphlet, yes.

Q. Soliciting the employees as members in the A. F. of L.? A. Yes.

Q. Was it this type of pamphlet that you posted (handing document to witness)? A. Yes, sir.

Q. And did you post them from time to time?

A. I posted several of them, yes.

Mr. Nourse: I will offer this as our next exhibit in order. It is entitled, "Join the International Association of Machinists, affiliated with the American Federation [236] of Labor.

Mr. Esterman: As Respondent's Exhibit No. 5?

Mr. Nourse: You will have to ask Mr. Thompson. I can't keep those straight.

Mr. Thompson: 5, I believe, yes.

Trial Examiner Schneider: Any objection?

Mr. Esterman: No objection.

Mr. Wilson: No objection.

(Testimony of George M. Hines.)

Trial Examiner Schneider: There being no objection, it may be admitted.

(Thereupon the document referred to was marked Respondent's Exhibit No. 5, and was received in evidence.)

RESPONDENT'S EXHIBIT No. 5

Join the  
International  
Association of Machinists  
Affiliated With the American  
Federation of Labor  
[Union Label]

If the information contained herein is not sufficient, write the undersigned. All questions asked will be cheerfully answered.

H. W. BROWN,  
Int. President.

Machinists' Building,  
Washington, D. C.

—Or—

[Stamped]: Received Mar 27 1943 National  
Labor Relations Board Twenty-First Region Los  
Angeles

Folder B [Union Label]7

Printed in U.S.A.

A Few Good Reasons Why Machinists Should Join  
the International Association of Machinists.

1. It raises wages. Employers know this, hence their opposition.

(Testimony of George M. Hines.)

2. It develops fraternity. It makes men self-reliant and resourceful.
3. It prevents a reduction in wages; reductions rarely come to well organized labor.
4. It makes labor respected. Power wins respect from employers, as from all other men.
5. It arouses thought. When men think they act. When men act together they are invincible.
6. It teaches cooperations. When the workers cooperate they improve their conditions.
7. It enlarges acquaintanceship. It restrains selfishness. It creates confidence. It removes suspicion. It drives away fear.
8. It pays an obligatory death benefit ranging from \$50 to \$300, in accordance with the length of membership.
9. It renders its members financial assistance when they are obliged to strike for better conditions, or to prevent unfair conditions being imposed upon them.
10. It helps the family. It brings more money, more comfort, more time to spend at home and better opportunities to improve social conditions.
11. It teaches employees their rights and how to maintain them. Servile workers are a menace to free institutions.
12. It is evolutionary. It steadily advances, improving the workers condition as rapidly as the average intelligence permits.



(Testimony of George M. Hines.)

13. It has shortened the workday for hundreds of thousands of men in machine shops, and the whole metal trade industry.
14. It has secured safety appliances on machinery, and factory inspection laws in many States and is constantly endeavoring to make machine shop life easier and more sanitary.
15. It is the high school and university for machinists where they can learn how to express their thoughts without fear or favor. It makes them confident and logical in their arguments in defense of their rights.
16. It is an absolutely democratic organization. There is no dictatorial power. Every member has a voice and a vote on all questions affecting the organization. Every member has the full right for a free expression of his opinions. The organization is governed by the progressive principles of Initiative, Referendum and Recall.
17. It has shortened the hours. It has increased the wages. It has increased the workers independence. It has insured safety. It has cheered the homes and firesides of thousands who are members, and it will do the same for you.
18. A union man's card is treated with respect and consideration by all union men, and the bearer of a union card is never without friends.

For further reasons why you should join the  
International Association of Machinists write

H. W. BROWN

Int. President.

Machinists' Bldg.,

Washington, D. C.

Read Carefully!

Think Earnestly!!

Act Squarely!!!

---

Mr. Nourse: We have been going about 2 hours  
now, if the Examiner please. May we have a short  
recess? [237]

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ANNA COX

a witness called by and on behalf of the National  
Labor Relations Board, having been first duly  
sworn, was examined and testified as follows:

Direct Examination [241]

Q. You started around the 15th of January?

A. Yes.

Q. In 1943. And you worked until the 22nd of  
February? A. Of February. [242]

Q. (By Mr. Esterman): Now, when you came  
to work for the company, who was your boss?

A. Well, we called her Margie.

Q. Margie. Was that Marjorie Goebels, Mrs.  
Goebels? A. I never heard the last name.

Q. But you know it was Marjorie?

A. Yes.

(Testimony of Anna Cox.)

Q. What was she in charge of, if you know?

A. The burring department.

Q. You worked under her?

A. Well, I was made to understand I was under her charge.

Q. I didn't hear that. [243]

A. I was under her charge. That is what they told me.

Q. Who told you that? A. What?

Q. Who told you that?

A. The guard that took me in. [244]

Q. When you were with the company, did anyone ever ask you to join the E.M.A.? A. Yes.

Q. Do you know who that was?

A. Margie.

Q. The same Margie you mentioned before?

A. Yes.

Q. Approximately when was this?

A. I think it was about a week before we were discharged.

Q. That would be around the 15th of February; is that right? A. Somewhere around there.

Q. What did she say to you? Well, first, where were you when she asked you to join?

A. I was at the burr bench.

Q. And she came up to you? A. Yes.

Q. And talked to you? A. Yes.

Q. Was there anyone else there?

A. Yes, a girl was sitting across from me.

Q. Well, did this other girl enter into the conversation?

(Testimony of Anna Cox.)

A. Yes. She asked what it was all about, and Margie told [246] her.

Q. Tell us what Margie said to you and what you said to her.

A. She said, "And we have a union."

Trial Examiner Schneider: Will you ~~start~~ start over again?

The Witness: I am so self-conscious that I will talk too loud. Margie said to me, "We have a union of our own. If you want to join, go to the tool crib and pay your dues."

Q. (By Mr. Esterman): Did she say anything else? A. No, that is all she said.

Q. Did you say anything to her?

A. I said I will think it over.

Q. Did you later become a member of the E.M.A.? A. No.

Q. Did anyone talk to you about joining the A. F. of L.? A. Yes.

Q. Did you join the A. F. of L.?

A. I didn't join, no.

Q. Did you take any steps towards joining the A. F. of L.? A. I was going to, yes. [247]

Q. (By Mr. Esterman): What did you do about joining the A. F. of L.?

A. Why, the night we was discharged one of the men came up to us and asked if we would join a Union, so we told him we would.

Q. Did he say what Union?

A. The A. F. of L.

Q. Do you know who that man was?

(Testimony of Anna Cox.)

A. No, I don't.

Q. And did you tell him you would join?

A. Yes, we were going to join the next day.

Q. That is what you told him? A. Yes.

[248]

Q. Now, when was it that the man came up to you and where was it? When and where was it that the man came up to you and asked you to join the A. F. of L.?

A. That was 9:00 o'clock recess. He was talking to one of the other girls and I happened to hear the conversation and I said, "What is it all about?" He wanted to know if I wanted to join the union.

Q. And that recess was what they call "smoking time"? A. Yes. [251]

Q. Who was that?

A. I don't know; I couldn't tell you.

Q. Was it this gentleman here (indicating)?

A. No, he is not here.

Mr. Esterman: I don't know if she knows who you are pointing to.

Mr. Nourse: All right.

Q. (By Mr. Nourse): The man who just testified? A. No.

Trial Examiner Schneider: Let the record show that the individual designated is Mr. Hines, the previous witness.

The Witness: He wore an A. F. of L. button.

Q. (By Mr. Nourse): He wore an A. F. of L. button? A. Yes. [252]



## MARY ELSENIUS

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Schneider: What is your address?

The Witness: 666 South Bonnie Brae, Los Angeles.

## Direct Examination

Q. (By Mr. Esterman): Where are you employed, Mary? A. Pacific Aviation. [257]

Q. Pacific Aviation? A. Yes.

Q. Located where?

A. 927 North Sycamore.

Q. You formerly worked for Gilfillan Bros., Inc., did you not? A. Yes.

Q. And started there in November of 1942?

A. Yes.

Q. Do you remember the date?

A. The 16th was on Monday; it was then if the 16th was a Monday.

Q. November 16th? A. Yes.

Mr. Nourse: November 16th?

Mr. Esterman: Yes.

Q. (By Mr. Esterman): What work did you do when you were hired? A. Burr bench.

[258]

Q. When you say you were in the burring department, you [259] mean doing burring work?

A. Yes.

(Testimony of Mary Elsenius.)

Q. All right. Was that from November until January?

A. It might have been late in December when they needed me in the machine department and they came over and got me. [260]

Q. After January up until the time you left the company who was your supervisor?

A. Mr. Nelson was the head, he was supposed to be the foreman.

Q. Did he direct you in your work?

A. Yes.

Q. Now, did you join the E. M. A.?

A. Yes, sir.

Q. The Employees' Mutual Association?

A. Yes.

Q. Approximately when?

A. Sometime in November, about the 26th of November.

Q. Shortly after you came to work for the company?

A. Yes.

Q. Now, were you asked by someone to join?

A. Marjorie Goebels, the forelady.

Q. She asked you to join?

A. She came over and asked us to join the E. M. A.

Q. She came over where?

A. To the burr bench.

Q. And who was there when she came over?

A. I was at the same table with Mrs. Long.

Q. Another worker? A. Yes.

Q. Was there anyone else there? [262]

(Testimony of Mary Elsenius.)

A. Two at the bench.

Q. Did Mrs. Goebels say anything to you?

A. She says, "Do you belong to the E. M. A. yet?" I said, "What is that?" She said, "That is the Employees' Union, and everyone is expected to join."

Q. What did you say; did you say anything?

A. I said that I wasn't in favor of company unions, but I would join it if it were compulsory.

Q. Then what happened?

A. She said, "Go to the crib and sign up with Mr. Bucknell."

Q. At the tool crib, Mr. Bucknell?

A. Yes.

Q. Did you ever go to him and sign up?

A. Yes.

Q. Did you pay him 25c dues? A. Yes.

Q. Did you thereafter pay dues again?

A. I paid dues twice.

Q. Including the first time? A. Yes.

Q. Who did you pay these dues to the second time? A. The same one.

Q. To Mr. Bucknell? A. Yes. [263]

Q. Do you recall whether you paid your dues to the tool crib man during working hours or during recess or when you were off, or what was the case?

A. During working hours.

Q. Was that true in both instances?

A. Yes, sir.

Q. Did you attend the January meeting of the E. M. A. at the Woodman's Hall? A. Yes.

(Testimony of Mary Elsenius.)

Q. And that was held, was it not, shortly after the first of the year; within the first five or six days?

A. The fourth of January.

Q. Was it the fourth? A. Yes.

Q. And did you see notices posted concerning the meeting that was to be held, that is, in advance of that date?

A. Yes, they have put a notice on the timeclock somewhere around there.

Q. That is how you knew about it first?

A. Yes.

Q. Now, how did you come to attend that meeting?

A. Well, Marjory Goebels told us that there was a meeting at 5:30, to begin at 5:30 and we were all expected to go and at that time she put out the lights.

Q. Told "us," meaning whom? [264]

A. The people at the burr bench.

Q. Did she tell you that?

A. She told us all about it.

Mr. Nourse: I would like to have that answer read.

(The record was read.)

Q. (By Mr. Esterman): She told you about it before 5:30 and then she turned out the lights?

A. Well, we knew about it before 5:30 because we saw the notice posted, but when at 5:30, when 5:30 came along, she said, "Come along, we are all going to the meeting."

(Testimony of Mary Elsenius.)

Q. She said to all of the girls at the burr bench, and you were there at that time? A. Yes.

Q. Was Alice Taylor there? A. Yes.

Q. Did you go to the meeting? A. Yes.

Q. Do you know whether you were paid for the time you were absent from your work?

A. No, we were not.

Q. Your shift was from 2:30 until 11:00, was it not? A. Yes.

Q. P. M.? A. Yes. [265]

### Cross Examination

Q (By Mr. Nourse): Did anyone ever ask you to join the A. F. of L.?

A. The A. F. of L. used to come out on the outside and pass [268] out pamphlets and asked us to join the A F. of L.; that is how I first got to thinking about joining it.

Q. Did you join it?

A. I signed up to join it.

Q. When was that? A. In February.

Q. In February; what time?

A. I don't recall the date.

Q. Where did you sign up?

A. They had cards attached to the leaflets that they passed out on the street.

Q. And who did you turn that in to?

A. I signed it and mailed it. [269]

Q. (By Mr. Nourse): Had you been on the burr bench all of the day of this meeting, on January 4th?

A. I think I was. I am not sure. I don't remember; I was back and forth.



(Testimony of Mary Elsenius.)

Q. And when you came back from the meeting did you go back to the burr bench?

A. I naturally went back to whatever I was doing.

Q. Well, what were you doing when you started to go to the meeting? Were you on the machine that day?

A. I was in the burring department because she turned out the lights and we had to go.

Q. She turned out the lights after all of you left for the meeting?

A. While we were still at the table and she said, "Come on girls, we are going to the meeting."

Q. And did everybody go that was at the bench?

A. Yes.

Q. How many were there then?

A. An average——

Q. How many were there when she turned off the lights?

A. Well, I don't know the exact number of people that were there because they ranged from 15 to 18 persons; they always didn't have the same number. [270]

Q. And what was your rate of pay before you were transferred?

A. You mean when I first started?

Q. No, just in January.

A. When I started there, I got 53c an hour and while I was on the machine, because I remember when I got my check we got that raise, a blanket raise of 20c an hour.

(Testimony of Mary Elsenius.)

Q. And did the girls in the burr department get that too?

A. I think they did; I think everybody got it.

Q. That was the blanket raise throughout the department? A. Yes. [272]

Q. (By Mr. Wilson): You stated, I don't know whether it was in your direct examination or cross examination, about the solicitation to join the E. M. A. on company time. Now, were you ever approached to join the E. M. A. on times other than company time? A. No.

Q. And whenever anybody came to talk to you in regard to it, it was during company time?

A. Yes.

Q. And did you ever discuss or have any applications about the A. F. of L. on company time?

A. No.

Q. And you never discussed the A. F. of L. with any representative of the union during company time? A. No. [274]

Q. When did you say you became a member of the A. F. of L.?

A. I didn't become a member of the A. F. of L. until I started working over at Pacific Aviation; but I had signed up for it

Q. When did you sign the application for membership, if [275] you remember?

A. In February, early part of February. I don't recall the date.

Q. About how many of these different meetings of the E. M. A. did you attend from the time you

(Testimony of Mary Elsenius.)

commenced employment on November 16th until you were discharged in February?

A. One. [276]

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### ALICE TAYLOR

a witness called by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Schneider: What is your address?

The Witness: 4417-3/4 Lockwood Avenue, Los Angeles.

#### Direct Examination

Q. (By Mr. Esterman): You are employed, are you not, by the Pacific Aviation Company at this time? A. Yes.

Q. What is your work there?

A. Drill press operator.

Q. And do you know when you started to work there? A. The 9th day of March.

Q. 1943? A. 1943.

Mr. Nourse: That was where?

Mr. Esterman: Pacific Aviation.

Q. (By Mr. Esterman): Prior to that, you were employed by [284] Gilfillan Bros. Inc.?

A. Yes.

Q. You started for Gilfillan Bros. Inc., at what time in November, 1942?

A. The 9th day of November over there.

(Testimony of Alice Taylor.)

Q. And you worked until February 22nd?

A. That is right.

Q. You are the Alice Taylor that is named in the complaint, are you not? A. Yes.

Q. Now, you became a member of the E.M.A., did you not, when you were employed by Gilfillan Bros. Inc? A. Yes.

Q. How soon after you went to work for the company did you join the E.M.A.?

A. I think it was the last of November.

Q. Will you relate the circumstances under which you happened to join; what happened; how you came to join?

A. Well, I was in the burring department and our forelady, Marjorie——

Q. Marjorie Goebels? A. Yes.

Q. Go ahead.

A. She came up and told us about the union and asked me if I had paid my dues yet and if I had joined, and I said, [285] “No”. She said, “You can go to the tool crib and join and pay the dues to Buck.” I don’t know what Buck’s other name is. We just called him “Buck.”

Q. Yes? A. I did.

Q. You went over there? A. Yes.

Q. Did you pay? A. Yes, 25c.

Q. 25c dues?

A. That is right.

Q. And did you understand that was for a month? A. That is right.

Q. Did you thereafter pay any more dues?

(Testimony of Alice Taylor.)

A. Once after that, yes.

Q. You paid them to whom?

A. Roy Johnson.

Q. That is the president of the E.M.A.?

A. Yes.

Q. Now, when you went to work for Gilfillan Bros. Inc., you did what work?

A. I started on the burring bench.

Q. And at what rate?           A. 53c an hour.

Q. And when you left you were earning what?  
[286]

A. 76c, I believe.

Q. Was it around 76c?           A. Yes.

Q. A penny or two each way?

A. We got the blanket—yes, it was 76c I am pretty sure.

Q. Did you receive an increase sometime in January?           A. That is right, 20c.

Q. An hour?           A. That is right, yes.

Q. Was that pursuant to any previous notice?

A. No.

Q. Did you know about the increase before you got it on your check?

A. No. [287]

Mr. Esterman: May I have this marked as Board's Exhibit 4 for identification? [290]

(Thereupon, the document referred to was marked Board's Exhibit 4, for identification.)

Mr. Esterman: It isn't the same type of card as Board's Exhibit No 3.



(Testimony of Alice Taylor.)

Mr. Nourse: When is that dated?

Mr. Wilson: January 11th.

Q. (By Mr. Esterman): I show you Board's Exhibit 4 for identification and ask you if that is your signature after the printed words, "My Signature"?

A. Yes, sir.

Q. And was it signed by you on the date that it bears, January 11? A. Yes.

Q. 1943? A. Yes.

Q. And did you turn that over to someone after you signed it?

A. No, sir, I mailed it in.

Q. You mailed it in to the I.A.M.?

A. Yes. [291]

Q. (By Mr. Esterman): Did you receive a union button after you joined the machinists?

A. Yes, sir.

Q. Did you wear it on the job? A. No, sir.

Q. What did you do with the button after you got it?

A. Carried it in my purse, I suppose.

Q. Did anyone else wear the button?

A. Yes, sir.

Q. Did you have any reason for not wearing yours? A. No, sir.

Q. Just didn't wear it?

A. Just didn't wear it.

Q. Now, were you present at the January 4th meeting that Miss Elsenius told us about a while ago? A. Yes, sir.

Q. I mean the E.M.A. A. Yes, sir. [292]

(Testimony of Alice Taylor.)

Q. Will you relate how you came to attend that meeting?

A. We were told to go to the meeting. The lights were turned out and Marge said we are all going to the meeting.

Q. This was what time of day? A. 5:30.

Q. By "Marge," you mean Marge Goebels?

A. That's right.

Q. And you then went to the meeting; is that right?

A. Certainly. The lights were turned out and the department was closed.

Q. And when did you return from the meeting?

A. 6:30, and then we went to lunch from 6:30 to 7:00.

Q. Were you paid for the hour between 5:30 and 6:30? A. No.

Q. Taken off your check? A. Yes, sir.

Q. Now, when you started in the burring department, you started to work under Marge Goebels? A. That's right.

Q. How many girls were working there?

A. About 12 I should think.

Q. Would that include burring and the work on the buffing and on the sanding machine?

A. They were all there together.

Q. That is all in one place? [293] A. Yes.

Q. What was your observation as to Mrs. Goebels in this respect; did she spend any time doing any burring herself? A. No, sir.

(Testimony of Alice Taylor.)

Q. Did she work at any of the machines?

A. No, sir.

Q. How did she spend *your* time when you were there?      A. Overseeing the work.

Q. Tell us what she did?

A. Well, she would bring work there for the girls to do and when it was finished she would take it back over to the bench.

Q. Did she bring work over to you and tell you to do it?      A. That's right.

Q. When you joined the E.M.A. was there anything said about a contract with the company; E. M.A. contract with the company?      A. No.

Q. Did you understand that there was such a thing?      A. Yes, sir.

Q. Did you ever see a copy?      A. No, sir.

Q. Did you ever see a copy of the constitution or by-laws?      A. No, sir.

Q. Was the subject of constitution or by-laws discussed [294] by Buck when you paid your 25c?

A. No, sir.

Q. What did he tell you when you paid your first dues for the E.M.A., or about the E.M.A.?

A. He said it was an employees mutual union; just a union of the employees. [295]

Q. Did you ask him any questions about it?

A. No, because it was during work time and I didn't want to be away from the department any longer than necessary.

Q. Was anyone else there joining when you joined?      A. I don't think so.

Q. You stated that you paid your second month's

(Testimony of Alice Taylor.)

dues, I think that would be around the latter part of December?

A. In a month's time.

Q. A month later to Mr. Roy Johnson?

A. Yes.

Q. Do you remember under what circumstances you paid that 25c?

A. I went over to the tool crib to pay it to Buck and he wasn't there and I came back and I said to Marge, "Buck isn't there; that other man is in the tool crib." Marge said, "Roy Johnson can take it." So I went over and Roy was standing there by one of the milling machines for one of the big machines and I paid it to him and he signed my little card.

Q. You said to him, "Here is my E.M.A. dues," and he signed your card?

A. Yes, I took my card along with me and he signed it.

Q. What was he doing?

A. Standing there by the side of the machine.  
[296]

Q. What was he doing? Working?

A. I think at that time he wasn't working; he was just standing there when I walked up to him and paid him my 25-cents.

Q. Did you leave your work to do that?

A. I did. [297]

#### Cross Examination

Q. (By Mr. Nourse): When you sent in this card, are you sure you mailed this card; this A. F. of L. card?

A. I certainly did. [299]

(Testimony of Alice Taylor.)

Q. Did you talk to any A. F. of L. person before you signed it?      A. No, sir.

Q. And then you made application to join the A. F. of L., you never saw their constitution or by-laws, did you?      A. I beg your pardon.

Q. You didn't see the A. F. of L. constitution or by-laws, [300] did you?

A. I belonged to the A. F. of L. at that time in another local. This was just a transfer.

Q. This was just a transfer?      A. Yes, sir.

Q. Did you read the constitution and by-laws?

A. Of the A. F. of L.?

Q. Yes.

A. I had before that in my other local, yes.

Q. You had some meeting of the union?

A. Well, no, but I had books on it. I don't think I ever went to the A. F. of L. meetings before that time, but the work I did previous to this I had to belong to the A. F. of L. to work.

Q. Did you maintain dues paying membership there?      A. I beg your pardon.

Q. Did you maintain dues paying membership there?

A. Because I was out of work then there wasn't any use in paying.

Q. You didn't know what the by-laws were of this new local, did you, when you joined it?

A. No. [301]

Q. (By Mr. Nourse): When you were told that the E.M.A. had a contract with Gilfillan Bros. Inc., did you ask what its terms were?



(Testimony of Alice Taylor.)

A. I don't think I ever discussed it with anybody.

Q. You said that you were told that they had one. You stated that on direct.

Mr. Esterman: She said she understood they had one.

Q. (By Mr. Nourse): How did you understand that they had one; from what source did you get that understanding?

A. I don't understand the question. [302]

Q. On direct examination, you were asked if you knew at the time you joined that the E.M.A. had a contract with Gilfillan Bros. Inc. You said you did, that you understood so. From what source did you get that information?

A. I still don't understand.

Q. Did you know when you joined the E.M.A. that it had a contract with Gilfillan Bros. Inc.?

A. I thought it was just a company union.

Q. Well, I know. Did you know that any contract between the union and Gilfillan Bros. Inc., existed?

A. No, sir.

Q. Did you ask whether one did?

A. No, sir. [303]

Q. And you considered yourself a member of the A. F. of L. at all times during the time you were employed at Gilfillan Bros. Inc.; is that correct?

A. Yes, surely.

Q. Did you notify the E.M.A. that you were a member of the A. F. of L.?

A. No.

Q. Did you notify the E.M.A. that you were

(Testimony of Alice Taylor.)

going to transfer from one local to another local of the A. F. of L.?

A. No, I didn't think I had anything to do with their company union. I thought this was compulsory.

Q. Did anybody tell you that it was compulsory?

A. No, but then we were given that understanding because we were told to go over and pay our dues.

Q. And that was Mrs. Goebels who told you to go and pay your dues? A. That's right.

Q. And didn't she tell you that you would probably be fired if you didn't join it?

A. No. [306]

Q. Did she ever tell you that Gilfillan Bros. Inc., ran the union and it was compulsory to join?

A. No, but we were just given to understand that we were working for the company and that we had to belong to this association.

Q. And you came to understanding that through Mrs. Goebel's telling you to go over and pay your dues? A. Yes. [307]

Q. Were you ever talked to by the E.M.A. officials in regard to E. M. A. business on company time?

A. No, only to go over and pay my dues, that was all.

Q. Did you ever hear any discussion or were you ever consulted about E.M.A. business off of company time? A. No.

Q. Always on company time? A. Yes.

(Testimony of Alice Taylor.)

Q. And it was on company property?

A. The only time I talked about it was when I was asked to join it and I went over to pay my dues.

Mr. Wilson: That is all.

Q. (By Mr. Nourse): You only paid dues twice?      A. That's right.

Q. And did you think the plan, then, of having to belong to the union and pay dues to it had been abandoned when you quit paying dues?

A. No.

Q. Why did you quit paying dues?

A. I just didn't think, I just didn't believe in company [308] unions.

Q. And so you thought you didn't have to do it and you didn't pay it?

A. Well, I understood then that I didn't have to belong to it to work there; see what I mean?

Q. And you knew that there was a question up as to which union should represent the employees? Whether it be the E.M.A. or the I.A.M.

A. No, it wasn't that. I was given to understand at first that we had to belong to the E.M.A. to work and after I found out I didn't have to belong to it, then I didn't pay any more dues.

Q. Let me see if this is right: Because Mrs. Goebels said that you should go over to Buck and pay your dues and join the union, and asked you first if you belonged and you said "no", and she told you to go to Buck and pay your dues, you understood that you had to belong; is that correct?

(Testimony of Alice Taylor.)

A. Yes, I did, because the way she approached me I understood that we had to belong to the company union.

Q. And that was in November, and in December you paid dues and then you discovered that your understanding of what she had said was wrong, and you ceased paying dues?

A. Well, I just understood that we didn't have to belong to the union to work.

Q. That is what I said. [309]

A. Yes.

Q. You could work there whether or not you belonged? A. Yes.

Q. And then you joined the A. F. of L. knowing you had joined, didn't you?

A. I just transferred over.

Q. Anyway, knowing that was all right?

A. (No response).

Q. You didn't make any bones about transferring over, did you? You didn't try to keep it a secret?

A. No, and I didn't discuss it with anybody.

Q. You thought you had a perfect right to do it?

A. Yes. [310]

#### Redirect Examination

Q. (By Mr. Esterman): The statement was that you went to this E.M.A. meeting January 4 and you didn't stay long; is that right.

A. Yes.

Q. Were you there long enough to see who presided at the meeting? A. Mr. Johnson.

(Testimony of Alice Taylor.)

Q. Roy Johnson? [313]            A. Yes. [314]

Q. (By Trial Examiner Schneider): You say in January you found out you didn't have to join the E.M.A. in order to work?

A. No, I just understood that we didn't have to belong to the union in order to work there. I was given that understanding to begin with, that I had to belong to the company union to work.

Q. What caused you to change your mind?

A. I don't know, probably I overheard somebody say that we didn't have to belong to the company union to work. [317]

Trial Examiner Schneider: Which occurred first, this discussion with Johnson participating or the election of the grievance committee; do you recall that?

The Witness: It was all the same time. I don't [318] remember which came first. It was all the same meeting because I only went to one. [319]

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ELLA RICHARDSON

A witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows: [321]

Direct Examination

Q. (By Mr. Esterman): You are employed where?            A. Pacific Aviation.

Trial Examiner Schneider: Speak up, please?

The Witness: Pacific Aviation.



(Testimony of Ella Richardson.)

Q. (By Mr. Esterman): Los Angeles?

A. Los Angeles.

Q. How long have you been there?

A. Since the ninth of March, 1943.

Q. Prior to that, you were employed by Gilfillan Bros., Inc.?

A. Till the 22nd of February, 1943.

Q. And you went to work for Gilfillan Bros., Inc., when?

A. I believe, 18th of November.

Q. 1942? A. 1942.

Q. What was your wage rate when you started?

A. Fifty-three cents an hour.

Q. What was it when you left?

A. Seventy-eight cents per hour.

Q. Are you one of the employees who received a twenty cent hourly raise sometime in January?

A. Yes, sir. [322]

Q. Do you know when in January you got that?

A. 16th of January, I believe.

Q. About the middle of the month?

A. Yes, sir.

Q. Did you receive any increases after that one of January 16th? A. Yes, one.

Q. How much and when?

A. The least—well, the last week of my employment I received a five cent raise. It went into effect the last week; the last check covered that, covered the new raise.

Q. You were raised from fifty-three cents to seventy-three cents and then to seventy-eight cents?

(Testimony of Ella Richardson.)

A. Yes.

Q. What work did you do when you started with the company?

A. I worked in the burring bench.

Q. Under whose supervision?

A. Marge Goebels.

Q. When you were employed were you brought to her directly?

A. Yes, from outside the plant I was taken and introduced to Mrs. Goebels.

Q. By one of the company guards?

A. Yes. [323]

Q. Now, I take it that during the time that you were connected with the burring department to the extent that you had to report there every day, when you were required to work in other departments, foremen would come and ask for you; is that right?

A. That's right.

Q. Who were some of the men that would come and ask for you?

A. Mr. Johnson.

Q. Is that Roy Johnson?

A. Yes.

Q. Can you name another?

A. Roy Lundberg.

Q. Roy Lundberg?

A. Yes.

Trial Examiner Schneider: Is this in the burring [328] department or the milling department?

The Witness: They are from the milling, but they would come to the burring department and would request I come up to the machines.

Trial Examiner Schneider: They would come up to the burring department?

(Testimony of Ella Richardson.)

The Witness: Before I was transferred up there all the time.

Mr. Esterman: Yes, my question was directed to the time when she was still reporting regularly to the burring department. At least, that is what I meant to say.

Trial Examiner Schneider: Very well.

Q. (By Mr. Esterman): Can you name any others, or were there any others?

A. James Clark.

Trial Examiner Schneider: What was that name?

The Witness: James Clark.

Trial Examiner Schneider: James Clark.

Q. (By Mr. Esterman): Have you named them all?

A. Mr. George Nelson, Don Rumsey. [329]

Q. (By Mr. Esterman): You were laid off by Mr. Al Walters, weren't you? A. Yes, sir.

Mr. Esterman: May I have this card identified as Board's [334] Exhibit No. —

Mr. Thompson: That will be 5.

Mr. Esterman: 5. Thank you.

(Thereupon the document referred to was marked Board's Exhibit No. 5, for identification.)

Mr. Nourse: With the same reservation made before, I have no objection.

Mr. Wilson: Are you offering it, Mr. Esterman?

Trial Examiner Schneider: It hasn't been identified by the witness as yet.

(Testimony of Ella Richardson.)

Mr. Wilson: I will hand it to her for you.

Mr. Nourse: What is the date on it, please?

Mr. Wilson: 2-6-43.

Q. (By Mr. Esterman): Was that your application, Miss Richardson, in the I. A. M. (handing card to witness)? A. Yes, it is.

Q. And does it bear your signature?

A. It does.

Q. And did you sign it on the date it bears?

A. Yes.

Q. February—— A. 6th.

Q. ——6th, 1943? A. Yes.

Q. Now, did you receive a union button? [335]

A. I did.

Q. From the I. A. M.? A. Yes.

Mr. Nourse: Are you offering this card?

Mr. Esterman: Yes, I am offering it.

Mr. Nourse: It is offered for the purpose of proving on that date she made application to join the I. A. M.?

Mr. Esterman: We will offer it with the same limitation that we offered these others, and that it is not offered to show her employment classification.

Mr. Nourse: Yes.

Trial Examiner Schneider: Any objection to the admission of the exhibit?

Mr. Nourse: No.

Mr. Wilson: No objection.

Trial Examiner Schneider: It may be received in evidence.

(Thereupon the document heretofore marked,

(Testimony of Ella Richardson.)

for identification, Board's Exhibit No. 5, was received in evidence.)

Q. (By Mr. Esterman): Did you wear your button in the shop? A. I did.

Q. When did you first wear it, if you recall?

A. The first day I got it. February, the 15th—I mean—yes, February the 15th.

Trial Examiner Schneider: I didn't get that date.

The Witness: February 15, 1943. [336]

Q. (By Mr. Esterman): Did anyone in authority in the plant speak to you about your button?

A. No.

Q. About two or three days after you started wearing it, did you have a conversation with Roy Johnson? A. I did. [337]

Q. (By Mr. Esterman): When you worked on the milling machines, did you have a chance to observe how Mr. Roy Johnson spent his time?

A. I did.

Q. Will you tell us how he spent his time, from your observation?

A. He set up the milling machines, supervised the work.

Q. Now, when you say "supervised the work," what do you mean? I want you to tell us what you saw him do. [339]

A. He would go from machine to machine and check the work that each operator was doing.

Q. Did he check your work that way?

A. Yes, sir.



(Testimony of Ella Richardson.)

Q. In what respect did he check it?

A. He would check to see that the machine was cutting properly, that it was being properly lubricated and that the setup was still in good condition.

Q. Is that the way he spent most of his time?

A. It is.

Q. Did you ever see him operate any milling machines?

A. On rare occasions, when they had a special job.

Q. And by "rare," you mean once in a week or a month——

A. A month.

Q. —or a day, or what?

A. A month, say once a month or even less frequently than that. That is up until the time he transferred to the turret lathes. [340]

Q. (By Mr. Esterman): During the first week of January, 1943, did you have a conversation with Mr. Johnson in the milling department on the subject of the E. M. A.?

A. I did.

Trial Examiner Schneider: What is that date?

Mr. Esterman: I said during the first week of January.

Trial Examiner Schneider: During the first week of January.

Q. (By Mr. Esterman): Where were you and where was he at that time?

A. I was operating a machine.

Q. And what was he doing?

A. He had come over to supervise the job or assist me.

Q. Tell us what was said, please.

A. Well, we had been discussing—it was after

(Testimony of Ella Richardson.)

the A. F. of L. activities had started, and we were discussing the E. M. A. and the A. F. of L., and he told me, and this is almost his own words, "I am going to have to resign as president of the E. M. A. or go back to operating a machine because I shouldn't be holding an office in a company union and holding a position as foreman." [342]

Q. (By Mr. Esterman): Did you attend any meetings of the E. M. A.?      A. Yes, I did.

Q. How many?      A. Three.

Q. And in what months, please?

A. December, January and February.

Q. That is, December, 1942?      A. Yes.

Q. And the next two months following?

A. That's right.

Q. Was it your observation that these meetings were called to start at 5:30; is that right? [343]

A. That's right.

Q. And your shift was from when to when?

A. 2:30 in the afternoon until 11:00 at night.

Q. Did you make arrangements to go to these meetings, or were you sent, or what?

A. Well, the notices were posted for employees to attend the meetings and whoever you were working under at the time, he generally told you to go or asked if you were going. [344]

Q. (By Mr. Esterman): Now, you have told us about the February meeting. Do you recall how you came to go to this January meeting just before that?

A. Well, when notices were posted and we were going to have a discussion about the contract that

(Testimony of Ella Richardson.)

none of us have ever seen, we decided that we would go, and there was a good attendance, I believe, at that.

Q. Well, just tell me how you happened to go.

A. Well, we left our machines and went to the Woodmen's Hall across the street at 5:30.

Q. At what time of day, if you remember?

A. 5:30.

Q. Was the power turned off?

A. I don't know if the power was turned off. We shut our individual machines off when we went to the meeting.

Q. And that was a half hour before—that was at 5:30?

A. Yes, sir.

Q. And when did you get back?

A. How?

Q. When did you get back?

A. Well, our lunch period was at 6:30, so we generally came back about 7:00.

Q. That is you stayed out and also had your lunch; is that right? [346]

A. Yes, at 6:30. The meetings generally lasted until 6:30 or after that, and then we had our lunch and came back.

Q. On any of these three occasions were you paid for the time, for any of the time between 5:30 and 6:30, or were you docked?

A. I was docked for that time.

Q. Did it happen on all three occasions?

A. It did.

Q. Now, were the circumstances of your attendance at the December meeting any different than

(Testimony of Ella Richardson.)

what you have just told us about the January meeting? I mean, did the same thing happen?

A. Yes, sir.

Q. You turned off the machines and went over there for an hour, and then had your dinner and came back to work at 7:00 o'clock——

A. Yes, sir.

Q. ——or, your lunch, I should say?

A. Yes, sir. [347]

#### Cross Examination

Q. Now, you went to the January meeting, and you said you saw a notice posted that the E. M. A. would have a meeting and the question of the contract between the company and the E. M. A. would come up, or wages, or something to that effect?

A. Yes.

Q. And you said you had a pretty good attendance at that meeting?

A. Well, there was one meeting they had a very poor attendance. The January meeting they had a poor attendance, and the next time there were fewer of us there. [348]

Q. Well, did you have a greater attendance in December than you had in January and February?

A. Yes, there was a good attendance in December.

Q. And you went there on a notice being posted that there would be a union meeting; is that it?

A. Yes. There was always one posted.

Q. And that meeting was for all shifts, that is,

(Testimony of Ella Richardson.)

the day shift that was going off, the night shift coming on, and the swing shift?      A. Yes, sir.

Q. How many do you think were at the December meeting? How many employees altogether?

A. I don't know.

Q. Well, do you think it was 50 or 60?

A. I didn't count them.

Q. How?      A. I didn't count them. [349]

Q. Give me your best estimate.

A. Well, the hall was full and the seats were full. I think there was a record taken of that, because they had a drawing for a bond, and if they have that on record, they probably still would know.

Q. I would like to have your estimate as to the December meeting, which you say was the biggest meeting?      A. I don't recall.

Q. Well, would you estimate it as much as 100?

A. I wouldn't want to give an estimate.

Q. Well, could you estimate the January meeting?

A. Let me see. No, I would rather not, except that we went to the meeting and not to count them is all I know.

A. All right. Would you say there were half as many at the January meeting as there were in December?

A. I guess. I don't know, just how many there were.

Q. Well, you said there were less at the January meeting than in December.

A. That is correct.



(Testimony of Ella Richardson.)

Q. Well, percentagewise, how much less, if you can tell, a half, a quarter?

A. A quarter. I would say there were only about a quarter as many there.

Q. A quarter as many there. Now, in February how many. What percentage of the January meeting were at the February [350] meeting?

A. Really, I couldn't tell you, and you could probably get that better from the records of the E.M.A.

Q. You would say it was considerably less.

A. I wouldn't say.

Q. Just "less", that is all you would say?

A. I don't know how many were there at any time.

Q. Well, you have said that there were less there.

A. The first meeting was the best attended, and the other meetings I couldn't give you an estimate on how many were there.

Q. Do you know how many were on all the shifts?

A. No, sir.

Q. Well, there were three or four hundred weren't there?

A. I don't know.

Q. Now, this heated conversation that you had with Mr. Johnson, he argued for the E.M.A. and you argued for the A. F. of L.; is that it?

A. No, that is not true.

Q. How?

A. No.

Q. What got heated about it?

(Testimony of Ella Richardson.)

A. Well, I asked him if he objected to the union button and if that was going to cause any trouble.

Q. And then he said "No"?

A. He didn't make any statement on that at all. [351]

Q. Oh, I thought——

A. (Continuing): He told me that the E.M.A. was going to do great things for the employees, and that he didn't like the A. F. of L. and I don't remember the exact words.

Q. What was heated about it? It didn't get heated——

A. Just like one person talking to another and you get very enthusiastic about the subject.

Q. Did you get enthusiastic? A. I didn't.

Q. You kept quiet? A. No, I talked back.

Q. When you talked back did you talk the same way as he did? A. I was asking his opinion.

Q. You asked his opinion as to the A. F. of L.?

A. As to the E.M.A.

Q. You didn't ask him about the A. F. of L.?

A. The only thing I asked about the A. F. of L. was if he objected to my wearing the union button, because he hadn't spoken to me since I started wearing it.

Q. And on direct examination you testified that he said that had nothing to do with his not speaking to you?

A. He did, he said it didn't have anything to do with his not speaking to me.

(Testimony of Ella Richardson.)

Q. That is all that was said about the union, was it?

A. And then the other discussion. [352]

Q. And then he tried to make a Christian out of you and to join the E.M.A.?

A. I wouldn't say Christian.

Q. Oh, pardon me. I am being a little facetious. He tried to make a convert out of you?

A. That is correct.

Q. And you thought he was talking then as the president of the E.M.A., didn't you?

A. I didn't know who he was talking as. All I know is the conversation.

Q. You knew he was president?

A. Certainly.

Q. And you thought he was talking for his organization?

A. That's correct.

Mr. Nourse: That is all.

#### Cross Examination

Q. (By Mr. Wilson): During these meetings where you said there was less in attendance in January and February, than there was in December, what did the employees do that did not go to the meeting? Did they remain in the plant, or outside the plant, or where?

A. They remained in the plant, so they wouldn't lose their time.

Q. And they continued to work during that time?

A. Yes. [353]

(Testimony of Ella Richardson.)

Redirect Examination

Q. Did you join the E.M.A. when you were with the company?           A. Yes, I did.

Q. When?

A. I think about the first week of my employment.

Q. Will you relate, briefly, the circumstances under which you joined, and how you came to join, whether you were asked, or what?

A. Mrs. Goebels asked me if I had joined the E.M.A., and I told her "No." She said I should see about it, and to go [357] up to the tool crib and see Buck, that he would take my application and give me my card.

Q. And did you do that?           A. I did.

Q. Did you pay dues?           A. Yes, sir.

Q. How many months did you pay dues?

A. Two months, I believe.

Q. That would be——

A. December and January.

Q. December, 1942 and January, 1943?

A. Yes.

Mr. Esterman: That is all.

Recross Examination

Q. (By Mr. Nourse): Didn't she tell you what the E.M.A. was?

A. She told me it was a company union.

Q. A union of company employees?

A. She didn't discuss it. She just told me it was a company union.

(Testimony of Ella Richardson.)

Q. Did you know what it was?

A. No, I didn't. That was the first I had heard of it.

Q. That was the first you had heard of it?

A. Yes.

Mr. Nourse: That is all.

Mr. Easterman: Nothing further from me. [358]

Q. (By Trial Examiner Schneider): Miss Richardson, I believe you testified that when you came to work for the company you were introduced to Marjorie Goebels by a guard.

A. I believe—I don't recall who it was that took me back there. It was someone they——

Q. What was said at the time you were introduced to Marjorie Goebels? Do you recall?

A. No, just that I was a new girl and for her to put me to work. That's all I recall.

Q. You got two raises while you were with the company; is that correct? A. Yes, sir.

Q. One of 20c and one of 5c?

A. That's right.

Q. Did you request either of those raises?

A. No.

Q. Did you ever ask for a raise?

A. Yes, I have.

Q. When?

A. I don't remember the exact date, but I had asked about the raise in December, I know in the latter part of December.

Q. And whom did you ask?



(Testimony of Ella Richardson.)

A. Well, I discussed it with Mr. Cramer, and I talked about it to Marjorie and to Mr. Johnson, I believe to Mr. Johnson, or I talked to Mr. Lundberg, Roy Lundberg, who was the foreman [359] of the milling department, about that.

Q. You also talked to Johnson and Marjorie Goebels?

A. Yes, I did. I don't remember the exact circumstances, but they told us that as long as this contract was in effect we couldn't get any individual raises through.

Q. Does that apply to Johnson and Goebels also? Did they tell you that?

A. Yes. Johnson told me that the contract—told us that we couldn't get any individual raises through with that, that was the understanding, that they had had trouble with it, I don't remember what about, but the impression given me was that we wouldn't get any raises until the new contract was formed in April.

Q. Why did you ask Johnson or Goebels?

A. Because they both were, at the time I spoke about it, were the people whom I took orders from, but this January raise I didn't ask for. That was general. [360]

## LEO MORTON PFLEGER

a witness called by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Schneider: What is your address?

The Witness: 3475 La Sombra Drive, Los Angeles.

## Direct Examination [369]

Mr. Nourse: I am willing to stipulate that on May 6, 1942 Gilfillan Bros., Inc. drew to the Employees Mutual Association its check No. 13119 on the Citizens National Bank, Head Office, Los Angeles, California, payable to the [377] Employees Mutual Association in the sum of \$209.22; said check being in the amount of the accounts payable record of Gilfillan Bros., Inc. to the Employees Mutual Association upon which were entered the following items collected by Gilfillan Bros., Inc. from the following named persons:

7- 9-41—Ne-Hi Beverage .....	\$ 14.04
7-17-41—F. Straw Candy Machine .....	2.40
8- 5-41—Ne-Hi Beverage .....	27.65
8-21-41—F. Straw Candy Machine .....	2.55
9- 6-41—Ne-Hi Beverage .....	26.04
9- 9-41—F. Straw Candy Machine .....	2.35
10- 8-41—Ne-Hi Beverage .....	21.63
10-10-41—F. Straw Candy Machine .....	3.00
11- 1-41—Ne-Hi Beverage .....	26.64
11-21-41—F. Straw Candy Machine .....	3.00
12- 4-41—Ne-Hi Beverage .....	14.79
12-23-41—F. Straw Candy Machine .....	3.25
1- 9-42—Ne-Hi Beverage .....	12.99
1-12-42—Coca-Cola .....	7.36

(Testimony of Leo Morton Pflieger.)

1-14-42—F. Straw Candy Machine .....	3.25
2- 5-42—Ne-Hi Beverage .....	5.62
2-17-42—Straw Candy Machine .....	3.50
2-23-42—Coca-Cola .....	6.10
3-21-42—Straw Candy .....	3.50
3-27-42—Coca-Cola .....	7.39

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4-17-42—Straw Candy Machine .....	3.60
4-21-42—Coca-Cola .....	8.57

That together with said check there was delivered to the Employees Mutual Association a copy of the said account payable and the statements of commissions rendered by the vendors above named.

I will further stipulate that under date of 12-31-42 *Gilfillan Bros., Inc.* drew Check No. 7157 on the Citizens National Bank of Los Angeles, California payable to the Employees Mutual Association the sum of \$123.88 in payment of its account receivable to Employees Mutual Association covering the following items collected by *Gilfillan Bros.* from vendors in the amounts as follows:

5-11-42—Coca-Cola .....	\$ 8.80
5-19-42—Straw Candy .....	3.75
6-16-42—Straw Candy .....	4.00
6-19-42—Calorwa Candy .....	7.03
7- 6-42—Coca-Cola .....	22.00
7-23-42—Straw Candy .....	4.00
8- 5-42—Coca-Cola .....	15.60
8-17-42—Straw Candy .....	4.00
9-26-42—Candy .....	4.50
10- 9-42—Coca-Cola .....	9.60
10-26-42—Candy Machine .....	4.50
11-10-42—Coca-Cola .....	15.70

[379]

(Testimony of Leo Morton Pfleger.)

11-18-42—Candy Machine .....	5.00
12-17-42—Candy .....	5.00
12-30-42—Coca-Cola .....	10.40

That together with said check there was delivered to the Employees Mutual Association a copy of the said account payable and the statements of commissions rendered by the vendors above named.

I further stipulate on the last statement of the account payable each of the items on the accounts payable book of Gilfillan Bros., Inc, was preceded by the abbreviation "Comm." and that the "Comm." is an abbreviation for the word "Commission."

I will stipulate that there is an open account payable on the Gilfillan Bros., Inc. books showing Gilfillan Bros., Inc., debtor to the E.M.A. for and on account of the following items collected as commissions from the following vendors and credited to the account of the E.M.A. under date of 1-25-43:

1-25-43—Commission Candy Machine .....	\$ 5.00
3- 5-43—Commission Candy Machine .....	10.00
4-20-43—Commission Candy Machine .....	5.00
6- 2-43—Commission Candy Machine .....	10.00

And that there are no other entries on said account.

I further stipulate that the commissions mentioned hereinbefore in the stipulation were commissions paid on [380] account of the proceeds from the sales received by the vendors from vending machines maintained by the vendors in the plant of Gilfillan Bros., Inc.

(Testimony of Leo Morton Pfleger.)

It is not my intention to stipulate that these funds were paid to Gilfillan Bros., Inc. by virtue of any contract between it and the vendors, but it is my intention that the respondent shall be free to prove that they were paid to Gilfillan Bros., Inc. by virtue of contracts between the vendors and the E.M.A. with Gilfillan Bros., Inc. merely acting as a channel to pass the funds from the vendors to the E.M.A.

Trial Examiner Schneider: Mr. Wilson, do you enter into that stipulation?

Mr. Wilson: I enter into the stipulation subject to the right and reservation to prove the source of the contractual relation between the vendors and the E.M.A., and the methods in which the payments were made to Gilfillan Bros., Inc. to the E.M.A.

Mr. Nourse: You mean received, don't you?

Mr. Wilson: Received and made by Gilfillan Bros. to the E.M.A.

Mr. Esterman: I accept the stipulation with the reservations made by Mr. Nourse and by Mr. Wilson.

Trial Examiner Schneider: Mrs. Volz?

Mrs. Volz: I so stipulate.

Trial Examiner Schneider: Very well. [381]

We will take a short recess.

(A short recess.)

Q. (By Mr. Esterman): You were elected treasurer of the E.M.A. in June, of 1942?

A. Some time——

Q. Some time about then?

A. Let me see. 1942——



(Testimony of Leo Morton Pfleger.)

Mr. Wilson: What was that date?

Mr. Esterman: June, 1942.

The Witness: No, that was the second election. I was elected treasurer, the first time was some time in 1941.

Trial Examiner Schneider: I can't hear the witness.

The Witness: Some time in 1941 I was elected treasurer.

Trial Examiner Schneider: Some time in 1941?

The Witness: Some time in 1941. I don't remember the exact date.

Q. (By Mr. Esterman): And you were re-elected in 1942? A. In 1942. [382]

Q. Now, I am going through this and asking you if it isn't a fact from looking at this book that on May 23, 1942, Mr. Roy Johnson paid you \$6.50, representing collections of E.M.A. dues?

A. Correct.

Mr. Wilson: Could I have that date again?

(The date was read.)

Q. (By Mr. Esterman): And I will ask you if it isn't a fact that on June 15, 1942, after looking at this receipt book, that Mr. Johnson paid \$4.50 for E.M.A. dues? A. That's correct.

Mr. Wilson: I will stipulate that Mr. Johnson has collected dues at different times for Gilfillan Bros., Inc. Employees Mutual Association, and turned them over to Mr. Pfleger as the treasurer of the E.M.A.

Mr. Nourse: I will not join in the stipulation.

(Testimony of Leo Morton Pfleger.)

Mr. Esterman: This concerns the company in the circumstances of the handling. We can't arrive at a stipulation.

Q. (By Mr. Esterman): It is also a fact that a similar payment was made by Mr. Johnson to you for the same purpose on July 9, 1942? [388]

A. That is correct.

Q. And that on July 10, 1942, Mr. R. Lundberg brought you \$4.00 E.M.A. dues?

A. That's correct.

Q. And that on July 11, 1942, Mr. Johnson brought you \$4.50 E.M.A. dues?

A. That's correct.

Q. And that on July 11, 1942, Mr. R. Brussow brought you \$4.50 in E.M.A. dues?

A. That's right.

Q. And that on August 20, 1942, Mr. Roy Johnson again brought you \$4.50 for E.M.A. dues?

A. That is correct.

Q. On August 29, 1942, Mr. R. Brussow brought you \$3.00 in E.M.A. dues?

A. That's right.

Q. And that on September 10, 1942, L. Schwertfeger brought you \$7.25 in E.M.A. dues?

A. That's correct.

Q. That is Loreta Schwertfeger, is it not?

A. I don't recall her first name.

Q. It is a girl? A. It is a girl. [389]

Q. (By Mr. Esterman): I show you a book-keeping tape, which I will ask to have identified as

(Testimony of Leo Morton Pflieger.)

Board's exhibit next in order, and ask you if you have seen this before? Will you look at it, please?

(Thereupon, the document referred to was marked Board's Exhibit 7, for identification.)

A. That is right.

Q. You have seen it? A. Yes, sir.

Q. Now, this purports to show dues collections, does it not, of the E.M.A. by the month, beginning in September, 1941? A. That is right. [393]

Mr. Esterman: Just a minute, Mr. Nourse. If you will look at this item under September 12, 1941, right here, it looks like \$240.21, but which he tells me is \$40.21, that (indicating) is a check mark, and that is the biggest item. These items beginning here (indicating) and going down obviously do not total \$500.00, as you can see. They don't total more than \$120.00 or so, which added to this \$370.25 presumably gives the total for the period.

I am asking him if he knows whether that is correct, whether the \$532.46 is the total of the dues collection between September 12, 1941 and March, 1943. [395]

The Witness: This evidently is the total up to—including everything up to this date.

Mr. Esterman: That is up to March, 1943?

The Witness: The last calendar date on there, that's right.

Mr. Esterman: Thank you very much. I would like to offer this in evidence for the purpose of showing the total dues collected during the period

(Testimony of Leo Morton Pfleger.)

mentioned in the exhibit, and I would like permission to substitute a copy therefor, in order that the exhibit may be in more comprehensible form.

The Witness: Pardon me. May I total that up, to make sure for myself?

Mr. Esterman: Yes. (Handing document to witness.)

The Witness: That is correct.

Mr. Esterman: I offer that in evidence.

Trial Examiner Schneider: Any objection, Mr. Wilson?

Mr. Wilson: I object to this as the absolute proof of all dues collected, unless this witness knows that that was all the dues, and the circumstances under which this tape was made will explain it.

Mr. Esterman: I am trying to save time, counsel.

Q. (By Mr. Esterman): This type was drawn by you, was it not, at the request of Mr. Ogren of this office, Field Examiner? [396]

A. I believe that was totaled by Mr. Ogren. I am not sure.

Q. Did you check the total at that time?

A. That I don't remember.

Q. Well, you checked it just now?

Mr. Nourse: Where did Mr. Ogren get the figures that he put on the tape?

The Witness: He took that from the data I took up to him at the time I was in his office.

Q. (By Mr. Esterman): And he totaled it and showed you this tape? A. That's right.

Q. And you checked it over? A. Yes.

(Testimony of Leo Morton Pfleger.)

Q. And did you check it with any data you had of yours? A. I believe so.

Q. Now, do you recall? A. No, I do not.

Q. Well, do you recall whether Board's Exhibit No. 7 does reflect the true fact with respect to the collection of dues during those months?

Mr. Wilson: Just a moment.

Mr. Esterman: Counsel, if there is going to be any dispute about it, we are going to get those in here and go over them. [397]

Mr. Nourse: I don't know anything about it.

Mr. Esterman: I am talking to Mr. Wilson.

Mr. Wilson: Mr. Esterman, I will stipulate that this is a list of dues that have been collected, made by Mr. Ogren, but whether it represents all the dues, this witness has testified he doesn't know. And he doesn't know whether he has checked this back and this witness cannot testify as to whether this is a correct tabulation of all the dues.

Mr. Esterman: Well, he hasn't brought these dues collection books, and, as I said before, I am trying to save time. He stated it as his recollection that he thought he checked the tape with his data at the time Mr. Ogren drew it or had it drawn.

Q. (By Mr. Esterman): Isn't that what you said? A. That's right.

Q. Will you try to recall whether that is a fact, that you did check those figures with your own receipt book?

A. Well, I probably did, because those are my



(Testimony of Leo Morton Pfleger.)

own figures in pencil writing. That is my own writing.

Q. You are referring to Board's Exhibit 7?

A. Yes.

Q. And you signed the bottom of that tape, didn't you? That is your signature?

A. Yes, sir.

Q. And you wouldn't have signed if you hadn't checked it? [398]

A. That is correct.

Q. Therefore, you must have checked it?

A. I must have checked it.

Mr. Esterman: Is that satisfactory?

Mr. Wilson: I wouldn't know. Your statement was Mr. Ogren had the tape.

Mr. Esterman: Maybe I was a little too eager to save time, and perhaps over eager. Thank you for the suggestion.

I offer Board's exhibit 7 in evidence.

Trial Examiner Schneider: You are, therefore, withdrawing your objection?

Mr. Wilson: I have no objection.

Trial Examiner: Mr. Nourse?

Mr. Nourse: For whatever it proves, I have no objection. I will not stipulate that it proves anything.

Trial Examiner Schneider: Mrs. Volz?

Mrs. Volz: None.

Trial Examiner Schneider: May I see the exhibit?

(The document referred to was handed to the Trial Examiner.)



(Testimony of Leo Morton Pfleger.)

Trial Examiner Schneider: What is the materiality of this, Mr. Esterman, referring to Board's Exhibit 7?

Mr. Esterman: I will say that the extent or absence of activity on the part of the E.M.A. at various dates with which we are here concerned is, in my opinion material to the [399] issues in this case. I intend to amplify that, of course, in my argument. And I say that this document reflects that activity or lack of it.

Trial Examiner Schneider: That is to say, that the rise and fall in dues collections, as reflected by Board's Exhibit 7, is of significance with relationship to critical periods of union activity?

Mr. Esterman: Yes, you can say that.

Trial Examiner Schneider: Very well. It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit 7, for identification, was received in evidence.)

## BOARD'S EXHIBIT No. 7

May 1942	✓ *1 50	<		< T T
	✓ 6 50		July 1942	✓ 11 00
	✓ 6 50			✓ 5 50
	✓ 6 00		7/10/42 Lund.	✓ 1 50
	✓ 7 50			✓ 4 00
	✓ 2 25			✓ 2 75
June 1942	✓ 2 75			✓ 4 50
	✓ 8 50		7/11 R Brus-	✓ 10 00
	✓ 4 50		sow	✓ 4 50
* Red figures.				✓ 650

(Testimony of Leo Morton Pfleger.)

Aug 42	✓ 7 25	Sept 12 41	✓ 40 21
	✓ 8 00	Jun July	
	✓ 4 50	Aug & Sept	
8/29/42 Brusso	✓ 3 00	Oct 41	✓ 4 25
	✓ 3 00		✓ 16 50
L. Schwartz-	✓ 2 25		✓ 1 25
feger	✓ 7 50	Nov 41	✓ 4 75
9/10/42 ^ Sept	✓ 7 25		✓ 15 25
Oct 42	✓ 29 50		✓ 11 00
	✓ 6 50	Dec 41	✓ 18 50
Nov 42	✓ 20 00	Jan 42	✓ 6 00
	✓ 8 50		✓ 12 25
	✓ 8 00	Feb 42	✓ 6 25
Dec 42	✓ 17 25	Mar 42	✓ 15 00
	✓ 11 50	Apr 42	11 00
Jan 43	✓ 12 50	[Red figures] :	532 21 S
	✓ 27 75	[Red figures] :	532 21 T
Feb 43	✓ 11 50		25
	✓ 25 25		
Mar 43	✓ 35 00		\$432.46
	✓ 16 00		
	✓ 2 00		
[Red figures] :	370 00 S		
	25		
	\$370.25		

April 12, 1943

The above tabulation represents all E M A dues collected beginning sometime in July or August, 1941, through March, 1943. I was elected Treasurer of the E M A at the time Lundberg was elected President—on or about Sept. 8, 1941, and I have served continuously since. All pencil notations above are my own.

L. M. PFLEGER

Subscribed and sworn to before me at Los Angeles, Calif., this 12th day of April, 1943.

QUENTIN OGREN

Field Examiner N.L.R.B.

(Testimony of Leo Morton Pflieger.)

Q. (By Mr. Esterman): You have been with the company, have you not, for a good many years-

A. For a good many years, yes.

Q. You started when, Mr. Pflieger?

A. June 2, 1920.

Q. And beginning with 1920 you stayed with the company continuously, or did you leave the company at some time?

A. I left the company in the latter part of 1940.

Q. Was that at the time of the fire?

A. That was prior to the fire.

Q. When did you come back?

A. Sometime in February, 1941. [400]

Q. Do you know when you joined the E.M.A.?

A. That I don't remember.

Q. Well, you were elected in 1941?

A. It was about that time. It was right around that time, but I can't remember.

Q. You were elected treasurer in 1941?

A. Yes.

Q. And you had become a member just prior to that first election?

A. Just prior to that, I would say, yes.

Q. It wasn't before 1941?

A. No. I was a member of the E.M.A. way back in 1934 or 1935, or '37, or whenever it was. I don't remember.

Q. You joined sometime before 1940, didn't you?

A. No, I joined sometime in 1937.

Q. Perhaps I don't make myself clear. I want

(Testimony of Leo Morton Pfleger.)

to know when you first became affiliated with the E. M. A. the first time?

A. That is in 1941.

Q. Didn't you just say you first belonged in 1937?

A. I said approximately or around 1937.

Q. That is what I am getting at. If you belonged then, then you must have joined it?

A. I joined it.

Q. And if you belonged in 1937, when did you join, in order to be a member in 1937? You must have joined in 1937 or some- [401] time in '37 or sometime before that?

A. Sometime around 1937. I don't know whether it was prior or after 1937.

Q. At any rate, your recollection is that you were a member in 1937?

A. That's right, for a short while.

Q. What do you mean by that?

A. Well, there was not a great deal of activity in the E. M. A. at that time.

Q. So you think your membership ceased because the E.M.A. was not active? A. Yes, sir.

Q. You didn't take steps to terminate your membership, did you? A. No.

Q. What happened in 1940 that makes you think you joined the E.M.A. in 1940? Did you join all over again? A. Yes.

Mr. Nourse: What difference does it make why a man joined, unless you are pointing the question

(Testimony of Leo Morton Pfleger.)

to your belief that he joined under the influence of someone?

Mr. Esterman: No. I am not asking him why he joined. I am asking him when, and he said 1940.

Mr. Nourse: What materiality has that?

Mr. Esterman: When he joined is material, and I am try- [402] ing to find out when he joined.

The Witness: Well, I did not join in 1940. That was prior to the fire. It was in 1941 that I joined.

Q. (By Mr. Esterman): You joined again in 1941?

A. I joined again then about the time I was elected treasurer of the E.M.A.

Q. What capacity were you employed in by the company between 1920 and the time you left just before the fire?

A. Most of the time I was a foreman.

A. A foreman of what?

A. Of the machine shop.

Q. Any particular shift?

A. The day shift.

Q. And when you were not foreman, what were you?

A. Doing tool work and machine work, general tool work and machine work.

Q. Were you a foreman at the time that you left, just prior to the fire? A. Yes, sir.

Q. When you went to work on machines at times when you say you weren't a foreman, was your

(Testimony of Leo Morton Pflieger.)

classification changed and was your pay changed, or did you simply not act as a foreman?

A. I did not act as a foreman. There were times back in the days when there wasn't much work when sometimes I didn't have anyone under me at all, I would be the only man in the [403] department.

Q. I see. Prior to your election as treasurer in 1941, you held no office with the E.M.A.?

A. No.

Q. What was your job at the time that you were elected the first time to the treasurership of the E. M. A.? A. A tool maker. [404]

Q. (By Mr. Esterman): You are engaged in work of a secret nature, are you not?

A. That is right.

Q. And the kind of work you do is covered by a military prohibition and cannot itself be revealed; isn't that right? A. That is correct.

Q. You do your work in a room which is separated from the other employees, or do you work along with other employees?

A. I am working around in other departments. I work in different departments. My work requires that I may have to run a machine in a certain part of the plant to make a certain part, or it may require that I may have to go to another department in the plant to make a test of that part.

Q. Do you spend most of your time in any one place? [406] A. No.

Q. Do you have a headquarters? A. Yes.



(Testimony of Leo Morton Pflieger.)

Q. A desk? A. Yes.

Q. And is that in the office or in the shop?

A. That is in the office, but not at the main plant. I am not at the main plant right now.

Q. I see. Does anyone share that desk with you?

A. There is someone shares the office with me.

Q. But it is your desk? A. He has——

Q. No one shares the desk?

A. He has his own desk. I have mine. [407]

Q. Did you have anything to do about posting a bulletin like that in the plant, on the bulletin board or anywhere in the plant?

A. Yes, I helped to post that bulletin.

Q. Do you recall approximately when?

A. Sir?

Q. Do you recall when?

A. No, I don't recall the date or the month.

Q. Did anyone post it with you? A. Yes.

Q. Who? A. Roy Johnson.

Q. How was it posted? How was it put up?

A. It was put up on the bulletin board in both buildings and also on the wall in the alleyway between the two buildings.

Q. That is three copies were put up?

A. I don't remember.

Q. Several copies?

A. I can't remember; all I remember is that I helped put them up. I don't remember how many we put up.

Q. There was more than one?

(Testimony of Leo Morton Pfleger.)

Mr. Nourse: He named three places. He said the two bulletin boards and a wall in the building some place.

Q. (By Mr. Esterman): And you helped post those with Mr. [416] Johnson?

A. Yes.

Q. Were they shellaced up or nailed up or how were they put up?

A. I don't remember; I think we put it up with mucilage, stuck them on there.

Q. Now, after reading the contents of that exhibit, doesn't it occur to you that this was posted coincidentally with the time that the A. F. of L. was active in and around the plant early this year?

A. I believe it was about that time.

Q. In other words, the title brings that back to you, doesn't it? A. Yes.

Q. Doesn't it say, "Employees' Mutual Association answers A.F.L."? A. That's right.

Q. And presumably, therefore, it was posted sometime after the A. F. of L. began to pass out handbills and application cards and so on around the plant? A. That's right. [417]

#### Cross Examination

Q. (By Mr. Nourse): Was there anyone else with you and Mr. Johnson when you posted Exhibit 2? A. No, sir.

Mr. Nourse: That is all.

Q. (By Mr. Wilson): Mr. Pfleger——

Mr. Esterman: Excuse me, just a moment. Do you know Mr. Nevins, the personnel man?

(Testimony of Leo Morton Pflieger.)

The Witness: No.

Q. (By Mr. Wilson): Was he with you when you posted the bulletins? A. No.

Mr. Wilson: Let the record show this is the tall thin grey-haired man.

Mr. Esterman: Mr. Nevins is about your size and height, is he?

The Witness: No, he is shorter and broader than I am.

Mr. Esterman: How much shorter, would you say?

The Witness: That is hard to say, I would say about [418] four or five inches shorter.

Mr. Esterman: And broader?

The Witness: Yes.

Mr. Esterman: Does he wear glasses?

The Witness: I believe he does.

Mr. Esterman: What color is his hair, if you know?

The Witness: About as grey as mine.

Mr. Esterman: About the same?

The Witness: Yes.

Trial Examiner Schneider: Let the record show that the witness also wears glasses. [419]

Mr. Esterman: We will stipulate that there is no merging of funds between the E.M.A. and Gilfillan Bros., Inc.

Mr. Nourse: Will you stipulate this: Gilfillan Bros., Inc., had nothing to do with the opening of this account?

Mr. Esterman: I certainly will.

(Testimony of Leo Morton Pflieger.)

Mr. Wilson: I merely brought those questions up on account of the blank check.

Q. (By Mr. Wilson): You stated that you have made out checks for Woodman's Hall, is that correct?

A. That's right. [420]

RESPONDENT'S EXHIBIT No. 6

United States of America

Before the National Labor Relations Board

Twenty-First Region

Case No. 21-C-2281

In the Matter of -

GILFILLAN BROS., INC.

and

INTERNATIONAL ASSOCIATION OF MA-  
CHINISTS, DISTRICT LODGE No. 94, for  
and on behalf of LODGE 311, AFL

APPLICATION FOR SUBPOENA

Employees Mutual Association and Respondent, Gilfillan Bros., Inc., respectfully request of the Trial Examiner that a subpoena issue for Harry Lea, requiring him to attend and appear at the hearing of the above entitled matter before the Trial Examiner, at Los Angeles, California, on such date as may be fixed by the Trial Examiner, but during the progress of the hearing thereof.

The purpose of calling said witness and the matters expected to be proved by him are as follows: the purpose of calling the witness is to ascertain

(Testimony of Leo Morton Pfleger.)

the basis for, and source of, the statement made in the letter received in evidence as Respondent Gilfillan's Exhibit 2 and purportedly signed by him, which statement is in substance that "the Employees Mutual Association is not, in fact or in the view of the Board, the agent of the employees", and to prove by the witness either that said statement was false or that the Board has pre-judged this case and is biased.

Dated: this 2nd day of July, 1943.

EMPLOYEES MUTUAL ASSO-  
CIATION

By PHILIP L. WILSON, JR.

Its Attorney

RESPONDENT, GILFILLAN  
BROS., INC.,

By PAUL NOURSE

Of Nourse & Jones, its  
attorneys

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Mr. Nourse: I ask in behalf of Respondent Gilfillan Bros., Inc., that the application in which the Employees Mutual Association join, that a subpoena for Harry E. Lea be granted so that the witness may be produced for the purpose of proof stated in the application.

I ask that it be marked Respondent's Exhibit 7 for identification.

(Thereupon, the document referred to was marked Respondent's Exhibit 7, for identification.)



Mr. Nourse: If I might amplify that; of course, if the witness should testify that he has been so advised by the Board that "the Employees Mutual Association is not, in fact or in the view of the Board, the agent of the employees," I would expect to follow that up with further evidence of this witness for the purpose of proving that the case had been prejudged and the Board biased.

Trial Examiner Schneider: I understand.

Mr. Wilson: May the record show that I concur in the request and make the same request?

Mr. Esterman: I would like to have Mr. Wilson state on what basis he joins that request; that is, to what extent [422] he deems that this touches the interest of his client?

Mr. Wilson: I believe that this touches the interest of the E.M.A. on several different grounds: There has been evidence introduced that there was increased activity on the part of both unions on or about this time; that this is ample evidence to substantiate the fact that the E.M.A. became more active; that it is a statement that might incite many different statements on the part of the E.M.A. and if the statements contained therein were true, it is detrimental and an unfair practice on the part of the I.A.M.

Mr. Nourse: I would like to ask Mr. Wilson a question. If it were true that the Board had prejudged this case and expressed the view that your client did not legally represent its employees, would you think its interests were affected by having that fact prejudged?



Trial Examiner Schneider: I think that is obvious.

Mr. Nourse: He is not stating that. I was wondering if he overlooked it.

Trial Examiner Schneider: Might I suggest that we let Mr. Wilson speak for himself?

Mr. Wilson: I think it has been stated in my objections that we have never received any notice of any Board ruling to that effect and that it would produce damaging effect to the E.M.A.

Trial Examiner Schneider: Anything further?

[423]

Mr. Esterman: I have nothing to say on that matter. I would like to see it, however.

Trial Examiner Schneider: Mrs. Volz, have you any position?

Mrs. Volz: I would like to see that, too.

Trial Examiner Schneider: Here is a copy.

Mr. Nourse: About my request, I would like to say that it would seem to me that in a hearing of this kind where one of the parties in the proceeding has made a statement through its officer, Mr. Lee, if that offer were false that the evidence would cast doubt and reflection upon the other evidence which had been produced by them through the Board. If it were not false then this would be a serious matter.

Trial Examiner Schneider: The record discloses that the International Association of Machinists has been represented throughout this hearing and that your application for a subpoena has been inspected by Mrs. Volz.

Mr. Nourse: We don't have a proceeding here where the complainant must come into court with clean hands, so I can't make that a basis for my objection.

Mr. Esterman: I think that is wholly irrelevant. I don't think that that statement has anything to do with what we are dealing with today.

Mr. Nourse: Unfortunately, I am afraid you are right.

Trial Examiner Schneider: Let us have no further ir- [424] relevance. Will you offer this in evidence?

Mr. Nourse: I offer it as Respondent's Exhibit 7.

Trial Examiner Schneider: Very well, the respondents' request for subpoena for Harry Lee for the purposes stated in Respondent's Exhibit 7 is denied, but Respondent's Exhibit 7 is admitted into evidence.

(Thereupon, the document heretofore marked Respondent's Exhibit 7 for identification, was received in evidence. [425])

## MARGARET GOEBEL,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

## Direct Examination

Trial Examiner Schneider: I think we have been taking liberties with your first name. We have been referring to it [435] as Marjorie.

The Witness: They call me that sometimes.

Trial Examiner Schneider: That is G-o-e-b-e-l-s?

The Witness: No "s".

Trial Examiner Schneider: No "s".

Q. (By Mr. Esterman): Mrs. Goebel, you work for Gilfillan Bros., Inc.? A. Yes, sir.

Q. Please talk up so that we can all hear you. You were employed by them on September 15, 1942?

A. As I recall, February 14th.

Q. The middle of September, 1942?

A. Yes, sir.

Q. And you were engaged to do? What kind of work did you do when you started?

A. On the burr bench.

Q. You were a burr bench operator?

A. Yes, sir.

Trial Examiner Schneider: May I interrupt? The date of your employment was what?

The Witness: September 14th.

Trial Examiner Schneider: September 14th.

Q. (By Mr. Esterman): Now, how long did you work as a burr bench—would that be burr bench operator? Is that what you call it? [436]

(Testimony of Margaret Goebel.)

A. I worked on the burr bench. I guess that is what you call it.

Q. How long did you work on the burr bench?

A. Oh, I don't know the exact dates.

Q. Well, just approxintaely. We don't expect you to remember exact dates when you don't know them.

A. I would say around three months.

Q. And then what work did you do?

A. Then I went on nights as lead girl.

Q. Will you tell us what you did then, starting with that change to the night shift, what your work was?

A. I had to show the girls how to burr and how to do their work, and see that they did their work right.

Q. Did you do any of the work yourself?

A. Well, I burred, yes.

Q. You did some burring. Now, how many girls were in that department when you went on the night shift?

A. I would say around fifteen.

Q. How was your transfer, if I may call it that, arranged? That is, from what you were doing before to the night shift?

A. I was just asked would I like to take charge of the girls at night.

Q. And who asked you that?

A. Mr. Foley asked me first.

Q. Who is Mr. Foley? [437]

(Testimony of Margaret Goebel.)

A. He has charge of the burr bench on the day.

Q. And you told him that you would like it?

A. I would like to try it.

Q. Then did he instruct you to——

A. No, he took me to Mr. Cramer.

Q. Then what happened?

A. Then I was told to come on nights.

Q. It was arranged through Mr. Cramer?

A. Yes.

Q. And then you started to come in nights?

A. Yes.

Q. Now, there has been another change in your work since then, has there not? Let me ask you this question first: how long did you continue in charge of the girls on the burr bench or until what time?

A. Wasn't it February 22nd?

Q. Until February 22nd. What happened then?

A. Then all of the girls on the burr bench but the five oldest girls were laid off.

That is, the shift was laid off and you were transferred then to something else?      A. To days.

Q. To days. Doing what?

A. Back on the burr bench where I started.

Q. How [438]

A. Back on the burr bench again.

Q. On the day shift?      A. Yes, sir.

Q. Under whose direction?

A. Mr. Cramer told me to come in and start there again.

(Testimony of Margaret Goebel.)

Q. Yes. Thank you for that, but I mean who was your supervisor? A. Mr. Foley.

Q. Oh, the same Mr. Foley. Has there been any other change in the type of work?

A. Then I asked to be put on inspection, to go back on nights. I liked the night work better, and I asked to be put back on nights on inspection.

Q. And when did you go on inspection? Does this help you: how long did you work on the day shift after February 22nd? Do you remember that?

A. I imagine about a month. I don't know.

Q. About a month. And after what you think was about a month, you went back to the night shift in the inspection department, and that is where you are now? A. Yes, sir.

Q. And your work consists of what at the present time?

A. Of inspecting the work for the threads and size, and see that it is all right before it leaves the department.

Q. And who is your immediate superior? [439]

A. You mean the lead girl?

Q. Whom do you report to?

A. The lead girl. She has charge of me, tells me what to do.

Q. She is your immediate superior?

A. Yes. [440]

Q. Now, when you took charge of these girls on the burr bench, that was on the night shift, to whom were you responsible, that is, who was your superior then?



(Testimony of Margaret Goebel.)

A. Why, Mr. Honeas and Mr. Walters.

Q. Now, who was Mr. Honeas?

A. He was superintendent of the whole machine shop.

Q. Was he superintendent with respect to all the shifts, or the night shift?

Mr. Nourse: Let's stipulate that. We have had it [443] time and again. Mr. Honeas was at first superintendent, or general foreman, rather, of the machine shop at night.

Mr. Esterman: If that is in the record, I won't press it.

Mr. Nourse: And then Mr. Honeas was the general foreman over the swing shift. Mr. Walters was general foreman over the night shift in the machine shop.

Mr. Esterman: Very well.

Mr. Nourse: And Mr. Whittet in the days. Then it will not be necessary to ask every witness where they worked. [444]

Q. (By Mr. Esterman): Your work included instructing the girls, did it not, on what they were to do and how they were to do it? A. Yes.

Q. And you spent a good deal of your time going from one girl to another in connection with that instruction?

A. Showing them what to do, yes.

Q. Can you tell us what percentage of your time you spent doing that and what percentage you spent doing something else?

A. Well, it was mixed up. I would show the

(Testimony of Margaret Goebel.)

girls some things and see that they did their work right and then I would do something myself, little jobs that had to be done.

Q. As between showing the girls what to do and doing things yourself—that is about how you spent your time, was it not?      A. Yes.

Q. Are you able to say what percentage of time you spent on one, and what percentage on the other?

A. About even, I guess.

Q. Is that your best recollection?

A. (No response.)

Q. Is that as well as you remember it?

A. I didn't time myself; I don't know.

Q. Now, while you were on this job—you know Mr. Roy [445] Johnson, do you not?      A. Yes.

Q. What work was he engaged in while you were in charge of the girls on the burr bench?

A. In charge of the milling machines as far as I know.

Q. He would come to your department at different times and get girls to work for him in his department?      A. Yes.

Q. And you would furnish those girls?

A. Yes.

Q. You joined the E. M. A., did you not, after you went to work for the company?

A. Yes, sir.

Q. Do you recall how soon after you went to work for the company that you joined that organization?      A. No, I don't.

Q. Do you remember whether you were a mem-

(Testimony of Margaret Goebel.)

ber of the E. M. A. when you worked on the burr bench on the day shift?      A. Yes, I was.

Q. That would be sometime during the first three months of your employment?      A. Yes.

Q. That you became a member?      A. Yes.

Q. Now, when you were on the night shift in charge of the [446] girls on the burr bench, did you hold any office in the E. M. A.?

A. No, sir.

Q. Have you ever held any office in the E. M. A.?

A. No, sir.

Q. Did you ever talk to the girls about membership in the E. M. A.?

A. After they were there a while I used to speak to them about it.

Q. Tell us what you said?

A. I just told them if they want to the join the E. M. A. and I told them to go around and talk to Buck.

Q. Did you make it a practice to do that after they were there a while?

A. If I thought about it.

Q. If you thought about it?      A. Yes.

Q. And what would you say to them generally; I assume you usually said the same thing, did you not?      A. Yes.

Q. Generally, what would you say to them?

A. If they cared to joint the E. M. A. to go down to Buck at the tool crib and he would explain it to them.

(Testimony of Margaret Goebel.)

Q. You would tell who Buck was and where he was?  
A. Yes.

Q. Did you attend E. M. A. membership meetings?  
A. Most of them. [447]

Q. How many did you attend? Do you know?

A. No, I really don't.

Q. They were held monthly, weren't they?

A. Yes.

Q. And they were held at 5:30, were they not?

A. Yes, sir.

Q. Now, was anything said to the girls that worked on the burr bench by you at the time that these meetings were scheduled?

A. (No response.)

Q. I will withdraw that. There were bulletins posted around the plant announcing that meetings were going to be held?  
A. Yes.

Q. And if the meeting was to be held at 5:30, what would you do about that time in reference to the meeting? Would you leave your department and go to the meeting?  
A. Yes.

Q. And what about the other girls?

A. They generally would come along with me.

Q. Would you request that they go with you?

A. No, sir.

Q. Did you ever ask any girls to go with you?

A. No, sir.

Q. Did you ever tell any girls to go with you? [448]  
A. No, sir.

Q. Did you ever turn out the lights when the time came for the meetings?

(Testimony of Margaret Goebel.)

A. I always turned out the light when the girls left the department?

Q. 5:30 would be one hour before the lunch hour; the lunch hour was 6:30? A. Yes.

Q. You never said anything to them about walking off at 5:30, an hour before lunch time, did you?

Mr. Nourse: You mean a half hour, 6:00 o'clock.

Mr. Esterman: She said 6:30.

The Witness: 6:30.

Q. (By Mr. Esterman): You knew where they were going? A. Yes.

Q. Now, coming back to the mater we were discussing before, Mrs. Goebel, I asked you if you would make any estimate of the percentage of time that you spent supervising the girls or instructing them and showing them what to do as against the percentage of time you spent working yourself. Do you remember my asking you that? A. Yes.

Q. And you said that your best recollection was about 50-50?

A. Well, it was so broken up. I would show the girls something to do and then when you get that set, you do [449] something yourself and when you are in the middle of doing something yourself, then another girl would come up and ask you about different things.

Q. In your experience, did you ever have any girls working there whom you considered incompetent? A. I had two girls.

Q. What did you do about them?

(Testimony of Margaret Goebel.)

A. I went up to Mr. Honeas and I think to Al Walters for the other girl.

Q. What was done about those girls, if you know? A. They were taken out.

Q. They were taken out? A. Yes.

Q. Are they the only two instances when that was done? A. Yes.

Q. Now, getting back to your estimate of the amount of time that you spent; you had occasion to make an estimate of that before, hadn't you?

(No response.)

Q. Just to refresh your recollection, didn't you have a discussion with Mr. Ogran, field examiner, in this office, about that very subject as to what percentage of time you spent on one and on the other?

A. Yes.

Q. Do you remember that? [450] A. Yes.

Q. Do you remember what you told him?

(No response.)

Mr. Nourse: She said "no", didn't she?

Mr. Esterman: I didn't get an answer yet. I thought she was thinking about it.

Mr. Nourse: I would say that if counsel says there is a contradictory statement, the proper thing to do is show the witness the statement and ask her if she so stated.

Mr. Esterman: I simply want to exhaust her recollection. I intended to do that.

The Witness: I don't know exactly what I said to him. [451]



(Testimony of Margaret Goebel.)

Q. (By Mr. Esterman): You gave him a statement, did you not? I am speaking of Mr. Ogran.

A. Yes.

Q. Will you look at this statement dated April 28, 1943 and——

Mr. Nourse: May I see it first, please?

Mr. Esterman: Yes, sure.

Mr. Nourse: Mr. Wilson, do you want to look at it together with me in order to save time?

Trial Examiner Schneider: We will recess to permit counsel for respondent to inspect the affidavit.

(Short recess.)

Trial Examiner Schneider: On the record.

Q. (By Mr. Esterman): After looking at this statement, do you recall now that on April 28th you made a statement that you spent about 90 per cent of your time supervising and instructing?

A. Yes.

Q. Which is more nearly correct: 90 per cent, or 50-50, after you have looked at this and thought about it? What do you think now?

A. That statement.

Q. You think 90 per cent is more nearly correct?

A. Yes.

Mr. Esterman: I have no further questions.

[452]

#### Cross Examination

Q. (By Mr. Nourse): When a girl told you to come over and you instructed her, did you stand

(Testimony of Margaret Goebel.)

over her, or did you do the work on the piece that was being burred?

A. I take the piece in my hand and do it first and then she does it afterwards.

Q. So that on that piece you do a part of the work? A. Yes.

Q. And does that take up a good part of your time in supervision; doing the actual work on these parts? A. Yes.

Q. And then at other times when the girls come to you, when they come over and ask; what is it you do then; when you are sitting at your bench and a girl comes to you? What do they come to you for?

A. If they finish one job I have to give them another. They don't just take their own work. Whatever has to be done I have to see that they have the right work to do. I have to give it to her.

Q. You get the part that she is to work on?

A. Yes.

Q. And if that is a change, why, you sit down and start that and show her what is to be done?

A. If she never did it before.

Q. Now, some of the girls that come in there have had [453] burring experience? Is that right, or not?

A. Well, it is all different in every place. You have to show them when they come in how to do it.

Q. When you have girls there who have been

(Testimony of Margaret Goebel.)

working two or three weeks in your department, it takes less supervision and inspection, does it not?

A. Yes, after they have been there a while.

Q. And as you get an experienced crew there, you give more time to doing the work yourself; is that correct? A. Yes, sir.

Q. So it depends on whether or not you got an entirely inexperienced person who doesn't know anything, or experienced girls who are there, as to how much time you give to actual burring and buffing and sanding yourself?

A. Yes, it all depends on the work and what kind of work.

Q. So that it isn't 90 per cent of the time that you give supervising, or 50 per cent; it varies depending on the kind of work you are doing and the experience of the workers in that department; is that correct? A. Yes, sir.

Q. Now, did you ever receive instructions from any one—just answer “yes” or “no”—as to sending girls from the burr department to other departments? Did you receive instructions from anyone as to that? A. Yes. [454]

Q. Now, from whom? A. The foreman.

Q. Will you name him; Mr. Cramer? Just tell us how you got these instructions as to sending girls to other departments? Tell us in your own words?

A. They come to me for girls and if I really didn't want to give up the girls, then they would go to the foremen and they would come back to me and tell me that either Mr. Honeas or Mr.

(Testimony of Margaret Goebel.)

Walters said that they could have them and I let them go.

Q. What general instructions, if any, had you received from Mr. Cramer or Mr. Honeas or Mr. Walters as to cooperating with other leadmen?

A. If I could spare the girls, to let them go.

Q. Now, this room where the——

Mr. Esterman: I thought we were going to see the plant.

Mr. Nourse: But we won't have anything in the record. All we will have will be the photographs in our minds, and I don't think the reporter can get that.

Q. (By Mr. Nourse): This burring department, it isn't in a separate room?

A. It is in the machine shop.

Q. Just a bench with some sanders and some buffers that are along the north part of the machine shop room? A. Yes, sir.

Q. And in the same room are the drill presses, automatic [455] screw machines, the turret lathes, the tappers and other machines; is that right?

A. Yes, sir.

Q. And the nearest machines to you are what; the drill presses? A. Drill presses.

Q. And in another part, the furthest part of the room from you are the multiple spindle screw machines? A. The automatics.

Q. Automatic screw machines, that is what I should have said, with a multiple spindle. These machines that are furthest from you are about

(Testimony of Margaret Goebel.)

how far? Can you point out anything in this room?

A. It is further back than this (indicating).

Q. As far as the corner of the room over there? The far corner?

A. Further than that I would say.

Q. About 100 feet from you?

A. About that.

Q. Now, the nearest line that is worked on there, the drill presses, the nearest of those are only about 15 or 20 feet from the burr bench. Isn't that right? A. Yes.

Q. And can you see where Mr. Walters stays, from your bench? A. Yes, sir.

Q. And is he around through the plant during his shift? [456] A. Yes, sir.

Q. And Mr. Hoaner, is he around through the plant past your benches during his shift?

A. Yes, sir.

Q. And the same way with the other general foremen on the other shifts? A. Yes, sir.

Q. Now, the inspection department that you work in is on beyond?

A. The other end of the room.

Q. Partitioned off by a wire screen from the machines? A. Yes.

Q. Mr. Sparks' office is at the end there with a glass partition and looks over all this work that is going on? A. Yes, sir.

Q. Is he in and out of the plant, that part of the plant during the day? A. Yes, sir.



(Testimony of Margaret Goebel.)

Q. Now, you said Roy Johnson was in charge of the milling machines. Do you mean he was the leadman there?

A. That is what I thought.

Q. What?

A. Yes, sir, that is what I thought.

Q. Did you ever say to any of the girls, "You have to go to the union meeting?" [457]

A. No, sir.

Q. Give me your words as nearly as you can as to how you would express it to them when these meetings came up?

A. I might have said that it was time to go to the meeting if you are going, but I never said they had to go to the meetings.

Q. And if any of them stayed, did you leave the lights on?      A. If anyone stayed, yes.

Q. Calling your attention to the meeting in the early part of February, I don't know the exact date——

Mr. Esterman: The first Monday, I suppose.

Mr. Wilson: I thought it was January.

Mr. Nourse: I am talking about February.

Mr. Wilson: I am sorry.

Mr. Nourse: Q. (Continuing) ——how many of the girls stayed on, if any, at their work?

A. I don't know which meeting is which meeting.

Q. May I see this statement that you gave Mr. Ogran. I would like to refresh your memory from the statement. You said to Mr. Ogran, as follows:



(Testimony of Margaret Goebel.)

“All but one meeting in this period was attended by every girl in the burring and buffing department. The exception was the last meeting while I was there \* \* ”

A. I remember that meeting.

Q. Now, Alice Taylor, who was at the drill press, and [458] Mary Elsenius who was on the burr work, did not go. Is that correct?

A. Yes, sir.

Q. And did you leave the lights on then?

A. I certainly did.

Q. And did Mary Elsenius continue her work?

A. I remember she was burring bolts.

Q. Burring bolts at that time?

A. Yes.

Q. Did you ever say to Anna Cox or to any of the girls on the shift that they were expected to go to the meeting and then pull out the lights while they were there?

A. I don't recall that girl's name at all.

Q. Did you state it to any of the girls?

A. No, sir.

Q. That they were expected to go, and then shut out the lights while they were at the bench?

A. No, sir.

Q. What was your custom as to shutting out the lights during rest periods and times of that kind?

A. Most of the girls would pull out their own lights and what lights weren't pulled out, I would pull out on my way out.

Q. Did the same thing occur when they went to the meetings?

A. Yes, sir.

(Testimony of Margaret Goebel.)

Q. They would pull out their lights. In other words, [459] there wasn't a master switch to put off all the lights over the burr bench? Each one had their own light? A. Yes, sir.

Trial Examiner Schneider: Each employee?

The Witness: Over each table there was a light.

Trial Examiner Schneider: Was there more than one employee to a table?

The Witness: Yes, sir.

Q. (By Mr. Nourse): On these occasions when they went to the meetings, did you turn out all the lights, or did they turn out some and you turned out some?

A. All of them would turn out their own and if lights were left that weren't necessary, I would turn them out. [460]

#### Recross Examination

Q. (By Mr. Nourse): When you asked these girls if they wanted to join the E. M. A. and if they wanted to they could go to Buck in the tool-room and he would explain it to them, did you ever check up to see whether they did go or not?

A. No, sir. [466]

Q. And how far was Buck from where they were working? A. About a hundred feet.

Q. In the same room? A. Yes, sir.

Mr. Nourse: That is all.

Mr. Esterman: No questions.

Q. (By Trial Examiner Schneider): Were there any employees discharged from your department while you were in charge of it?

(Testimony of Margaret Goebel.)

A. These two women that I told Mr. Walters and Mr. Honeas about.

Q. Will you relate the circumstances of that, please? How did the matter come to your attention?

A. You mean about laying the girls off?

Q. Yes.

A. Well, they just couldn't do the work or they complained about the work, and wouldn't do it the way you showed them, and just didn't qualify for the position.

Q. Did you say anything to the girls yourself?

A. Yes, I would. I would tell them how to do it first, and then if they didn't do it again, I would still show [467] them how to do it, and tell them they would have to try to do it better.

Q. Then thereafter you reported it to Mr. Honeas or Mr. Walters? A. Yes, sir.

Q. If you gave orders to a girl in your department, was it your understanding that the girl was under an obligation to obey them?

A. Well, if I told her to do something, to do a certain kind of work, I imagine she should do it.

Q. How did the girls receive the work. Did you assign is to them? A. Yes, sir.

Q. And then if a girl ran out of work, would she come to you and ask for more?

A. Yes, sir.

#### Cross Examination

Q. (By Mr. Wilson): Did you feel that you had the power to fire anybody? A. No. [468]

(Testimony of Margaret Goebel.)

Q. Did you have the power to transfer the girls around to any other department in the plant?

A. No, sir.

Q. When you say that you laid out the work, did that mean that, for instance, if several boxes or truck loads of parts would come up to the department that had to be burred, that you would allot a certain number of parts to a bench over here (indicating), and a bench here, you would put part on one bench and part on another bench? Is that what you did in laying out the work?

A. Yes, sir.

Mr. Wilson: That is all.

Trial Examiner Schneider: You never told any girl that she was discharged?

The Witness: No, sir.

Trial Examiner Schneider: You never hired a girl——

The Witness: No, sir.

Trial Examiner Schneider: ——to work in the plant?

The Witness: No, sir. [469]

Q. (By Mr. Nourse): After the 22nd of February, when you went down and went to work on the burr bench under Mr. Foley, that is, where Mr. Foley was the leadman, did you get the same rate of pay that you got when you were upstairs as lead girl? A. Yes, sir. [470]

## MYRTLE VOLZ,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

## Direct Examination

Q. (By Mr. Esterman): Your full name is Myrtle Volz? A. Yes, sir.

Q. And you live where?

A. 7806 Lou Dillon, Los Angeles.

Q. You are an organizer for the International Association of Machinists? A. Yes, sir.

Q. Have I indicated your correct title,—organizer? A. And business representative.

Q. And business representative. How long have you been engaged in that type of work? I mean, how long have you been so engaged for the I.A.M.?

A. About twenty months.

Q. And you have devoted the last twenty months to organizational work exclusively?

A. Yes, sir. [471]

Q. During that period of time, about how many plants have you organized? A. Nine or ten.

Q. And is that in the Los Angeles area?

A. Yes, sir.

Q. By that do you mean that you yourself directed the organization of those plants?

A. Yes, sir.

Q. Have you also assisted in the organization of other plants, that is, other than the nine or ten you have mentioned? A. Yes, sir.

Q. Can you state how many of those you assisted at? A. Five or six.

(Testimony of Myrtle Volz.)

Q. And that is also in this area?

A. Yes, sir.

Q. Now, you took charge of the organizing of the Gilfillan plant, did you not, in January?

A. Yes, sir.

Q. Do you know when you started your organizational efforts?

A. Approximately on January 11th, 10th or 11th.

Q. 1943? A. '42—No, 1943.

Q. You mean this year, '43?

A. Yes, sir. [472]

Q. (By Mr. Esterman) All right, look at your records. Tell us if you can, how many applications you got before the 22nd of February, and how many after?

A. Well, in January my records show I got around 40 cards; between 30 and 40 cards. And up to February 22nd, I received 103.

Mr. Nourse: You mean during February; did that include 30 or 40?

The Witness: Besides.

Q. (By Mr. Esterman) In the month of February, 103 A. Yes. [486]

Q. And 30 or 40 in the previous month?

A. Well, 40 in the previous month.

Q. That would be a total of 143?

A. Yes. [487]

Q. You said that you were in charge of the organization work at the Gilfillan Plant?

A. Yes, sir.

Q. Does that then mean that you had charge of all the activities of the I.A.M. there? A. Yes.



(Testimony of Myrtle Volz.)

Q. All right.

Trial Examiner Schneider: Mr. Nourse, am I correct in assuming that the purpose of this line of questioning is to determine the basis for the opinion which the witness stated, on the last day, that the employees were afraid to join the union?

Mr. Nourse: Yes, that is part of it. And the other part I wouldn't want to disclose right now. I will assure your Honor that I think that is relevant, what I am going to bring out, and is the basis for cross examination.

Trial Examiner Schneider: Proceed.

Q. (By Mr. Nourse): Does that include the appointment of a shop steward? A. Yes, sir.

Q. In this plant? [509] A. Yes, sir.

Q. And what duties do you assign to a shop steward whom you appoint within the plant?

A. They are to try to get members, they are to sign up members on authorization cards and applications. They are to keep the members that have signed up notified as to our activity in the plant.

Q. As to your what?

A. Activity in and around the plant.

Q. And is that the duty of the shop steward of the organization? A. Yes, sir.

Q. Now, do you also appoint a committee?

A. Yes, sir.

Q. To act within the plant? A. Yes, sir.

Q. And how many did you put on this committee? A. I believe it was two.

Q. Weren't there three? I call your attention

(Testimony of Myrtle Volz.)

to Mr. Hines' testimony that a Mr. Haag was a member of the committee, and I think he also said a Mr. Hammond, or something like that, some other man he spoke of.           A. Hammond?

Mr. Esterman: That isn't what he said, counsel.

Q. (By Mr. Nourse): It wasn't? [510]

A. No, sir.

Q. There were only two members on the committee?           A. As far as I can recall, yes.

Q. Now, then, they would report to you their activities within the plant, and which were not open to your observation as a person working outside in the hall or in passing out posters?           A. Yes.

Q. Did they tell you how many people were wearing A. F. of L. buttons in the plant? By "A. F. of L." we will assume that I mean I.A.M. Well, your buttons at that time did read "A. F. of L.", didn't they?           A. Yes, sir.

Q. They don't any more?

A. No. I don't believe they did.

Q. How?

A. I don't remember their telling me.

Q. You knew that Mr. Hines wore a button which said, "Shop Steward, A. F. of L."?

A. Yes, sir.

Q. And that he wore it in the plant?

A. Yes, sir.

Q. Did you know that there were other committeemen that wore a button in the plant?

A. Yes, sir. [511]

Q. And in round figures, how many others did

(Testimony of Myrtle Volz.)

you know that disclosed their affiliations with your organization openly within the plant?

Mr. Esterman: Just a, minute. How is she going to know that? You haven't put her in the plant, have you?

Mr. Nourse: She was in charge of her committee.

Mr. Esterman: Unless I don't understand the question. May I have that question, please?

(Question read.)

Mr. Nourse: Well, I will reframe the question, because it is not clear.

Q. (By Mr. Nourse): In round figures what number of employees, to your knowledge, or reported to you by your committee, disclosed their affiliation with your union openly and within the plant?

Trial Examiner Schneider: If you know.

Q. (By Mr. Nourse): If you know.

A. I don't know, because as people signed up we usually gave them a button, and there were lots of them that didn't wear their buttons.

Q. And you saw lots of them going in and out of the plant with your buttons on?

A. Yes, but I don't know how many. [512]

Q. (By Mr. Nourse): Is the steward the man in charge of the committee within the plant?

A. Yes, sir.

Q. I am not going to ask names, I am not interested in that. You had others who assisted you in the organizational work outside the plant?

A. Yes, sir.

(Testimony of Myrtle Volz.)

Q. And your duties then were divided, that is, you and the others outside the plant did that work, and Hines and whoever his other committeemen were did it inside the plant? A. Yes.

Q. Did you hear Mr. Hines' testimony that he personally signed up 100 members, or got 100 authorization cards? A. Yes. [523]

Q. Was that correct?

A. Approximately, yes.

Q. So of the 151 authorizations you got Hines got a hundred? A. Approximately, yes.

Trial Examiner Schneider: What was the answer?

The Witness: Approximately, around that. [524]

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O. C. STEGNER

a witness called by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined [535] and testified as follows:

Direct Examination [536]

Q. (By Mr. Esterman): —in June of 1941? Now, do you know of your own knowledge—strike that. I will ask you first: when did you become a member of the E.M.A.?

A. Oh, that was after it was re-organized after the fire.

Q. It would be sometime after September, 1940?

A. That's right.

Q. And can you place it a little better than that? Was it in the following year?

(Testimony of O. C. Stegner.)

A. In the following year, in 1941.

Q. About when? A. About March.

Q. That you became a member? A. Yes.

Q. Now, was Lundberg president then?

A. Yes.

Q. And what work was he doing at that time, if you know? A. He was a mill operator.

Q. On what shift? [545]

A. The day shift.

Q. Has he continued in that position since, or has there been some change in his job?

A. He came up to that—on the mill he became a leadman, on the mills, on the day shift.

Q. When was that, do you know?

A. That was before the end of 1941—let's see—or, I suppose about the early part of '42. [546]

Q. (By Mr. Esterman): Now, what work did he do, in your observation? How did he spend his time?

A. Well, in other words, after he was on those mills for some little time, is my recollection, he was advanced to leadman or foreman.

Q. Yes.

A. In other words, he had charge of the setup, and he was to see all the parts was properly milled. He had——

Q. You saw him in the plant at different times, didn't you? Weren't you on the same shift?

A. Yes, sir.

Q. You saw him daily? A. Daily.

Q. Now, if I were to ask you, how did he spend

(Testimony of O. C. Stegner.)

his time, what did he do, I don't want you to tell me what he was supposed to do, but what he did.

A. To my mind, he was instructor, kept the mill-hands busy.

Q. Did you go around and see him instructing them?      A. That's right.

Q. And by "keeping them busy", what do you mean?      A. Keeping the machines operating.

Q. Giving them work?

A. Giving them work, and when one job was complete, give [547] them another setup for another job.

Q. You saw this?      A. Absolutely.

Q. You are an officer, are you not, of the E.M.A.?

A. Vice-president.

Q. In your capacity as vice-president, do you devote any time to the collection of dues?

A. Not as in the capacity of vice-president.

Q. Well, I am not trying to hide anything from the witness. The record shows that—you weren't here, but this is in the record, that beginning at least in October, 1942 you turned over to Mr. Pfleger sums of money once a month?      A. That's right.

Q. As dues collections?      A. That's right.

Q. This money that you turned over to Pfleger once a month consisted entirely of funds that you collected in the form of dues?

A. In the form of E.M.A. dues.

Q. At 25-cents per head?

A. That's right; per month.

Q. All right. Now, what was your procedure



(Testimony of O. C. Stegner.)

in collecting the dues, that is to say, how did you go about it?

A. Each department had appointed on the floor of the E.M.A. meeting a delegate—we called him a delegate—a delegate [548] was appointed to represent each department.

Q. Were you a delegate? A. I was not.

Q. Excuse me. Go ahead.

A. And these delegates, I instructed them or showed them how, or asked them to collect these dues from each one of the group that they were in. They, in turn, would turn the list of the dues collected over to me, and I, in turn, would turn them over to Mr. Pfleger.

Q. And they would give you the money along with the list? A. That is right.

Q. Did you give them a receipt?

A. Always.

Q. Did you spend any time yourself collecting dues? A. Some, yes.

Q. Is it your statement then that most of this money you turned over was dues collected by other people?

A. By the delegates of each department.

Q. And channelled through you to the treasurer?

A. That's right.

Q. Did you engage in soliciting membership for the E.M.A.? A. Yes.

Q. How long have you been doing that; since you were vice-president?

A. Since I am vice-president. [549]

(Testimony of O. C. Stegner.)

Q. By the way, did we find out when you became vice-president? Can you tell us that?

A. That was in May or June of 1942.

Q. You were elected with Mr. Johnson?

A. That's right.

Q. And at the *same that* Mr. Pfleger was re-elected? A. Re-elected treasurer.

Q. And since then you have been soliciting memberships from time to time? A. Yes.

Q. Now, are you able to say whether you solicited memberships during working hours or not during working hours, or was it a combination of the two? What is your recollection?

A. It was a combination of the two.

Q. Sometimes during working hours and sometimes out of working hours? A. Yes.

Q. Did anyone ever tell you to stop soliciting memberships during working hours?

A. No. I might add an amendment to that answer, that I never was forbid to do it and never asked permission to do it. I done it just as I would have time, when I wasn't—that is, in other words, I would take time out from my own job to see someone as a new member.

Q. I will accept the amendment. Now, in your capacity as [550] grievance man, and as a member of the grievance committee of the E.M.A.—strike that.

There is testimony in this record that the E.M.A. meetings, when they were held, were called for 5:30 and usually lasted an hour, to catch the shifts, that is, one going off and the other coming on?

(Testimony of O. C. Stegner.)

A. Yes.

Q. Is that your recollection of it also?

A. Yes.

Q. Now, there is also testimony that with perhaps one exception people were docked for the time that they spent away from their work to attend this meeting. I will ask you whether, in your capacity as a grievance man or as a member of the grievance committee, you ever took the subject up with the company, that is, the docking of employees for attending the E.M.A. meetings? A. No.

Q. Do you know whether the E.M.A. ever took the subject up with the company?

A. I don't know.

Q. How? A. I don't know.

Q. Now, it has also been testified to, to the effect that the A. F. of L., that is, the Machinists' Union became active around the Gilfillan plant early in January. With reference [551] to that period, that is, the period beginning early in January and say for about five or six weeks, did you have occasion to talk with Mr. Gilfillan at any time during that period? A. It was along sometime in March.

Q. Well, what was the occasion for your talking to him?

A. That occasion was called because quite a few of the—six or seven of us, of the delegates of the E.M.A., the officers of the E.M.A., rather,—at that time I think Mr. Gilfillan had received, and so had Mr. Johnson, different letters about the A. F. of L. If I recollect right, there was the information in one of the letters that quite a few of the members were

(Testimony of O. C. Stegner.)

joining the A. F. of L. or had been solicited on the outside, and they were going to try to call for an election.

Q. Well, I don't want us to get mixed up here, Mr. Stegner. I want to find out how the occasion for your talk with Mr. Gilfillan arose? Do I understand that you have in mind a time when you and other members of the E.M.A. went to his office or talked with him?

A. Yes. That was along in March sometime.

Q. Now, did you go there with a purpose in mind? Did you go there for some purpose, or just go to visit with him?

A. We didn't go to visit with him. We went there to talk about our new or other contract of the E.M.A., which was coming up shortly, and we went in to discuss and talk about [552] bringing up another agreement with the company, and then is when this other come up about the A. F. of L.

Q. What came up about the A. F. of L.? Will you please tell us?

A. About this solicitation on the outside, and about the pressure they were putting on trying to get a bunch of the E.M.A. members interested in the A. F. of L.

Q. Well, now, I want you to try to tell us what came up. You understand it doesn't help us much if you just sum it up. We would like to have you tell us, as well as you can, how that came up, who mentioned it first, if you remember, and who discussed it.

(Testimony of O. C. Stegner.)

Q. Well, we discussed it with Mr. Gilfillan.

Q. Tell us who "we" are. I don't think we have found that out.

A. That is the officers of the E.M.A.

Q. Was Johnson one of them? A. Right.

Q. And Pfleger? A. Yes.

Q. And yourself, of course? A. Yes.

Q. Any others?

A. And the secretary, the acting secretary, Carmen——

Trial Examiner Schneider: How do you spell that? [553]

The Witness: C-a-r-m-e-n Fauria—I can't spell her name.

Q. (By Mr. Esterman): F-a-u-r-i-a, Fauria?

A. That's her last name.

Q. Anyone else?

A. I don't just recall who else was present. [554]

Q. (By Mr. Esterman): Well, tell us how the subject of the A. F. of L. came up. You started to tell us about that.

Q. I think that I never seen the letters. I think Mr. Johnson and Mr. Gilfillan both had received letters from the A. F. of L., and the discussion came up about our organization of the E.M.A. [555]

Q. Well, now, that is what I want to know. Who brought it up? Did somebody say anything?

A. Yes, it was brought up through these letters, it was voiced to the extent——

Q. Who voiced it? A. Mr. Gilfillan.



(Testimony of O. C. Stegner.)

Trial Examiner Schneider: Permit me to interrupt, if you will, please.

Will you read the last two questions and answers, please?

(The questions and answers were read.)

Trial Examiner Schneider: Proceed.

Q. (By Mr. Esterman): Tell us, please, what he said.

A. He asked us, as officers of the E.M.A., how our organization was functioning, and if it was in good order, and he also asked, or stated, that if it wasn't, we better get on our toes and keep the thing functioning, if we wanted to get in competition with the A. F. of L., I think is about the way the words were put. [556]

Q. (By Mr. Esterman): You have heard this discussion off the record, and after that, does it come back to you that this meeting in Mr. Gilfillan's office, wherein this discussion about the A. F. of L. took place, concerned a petition they had filed asking for an election?

A. To my recollection, yes.

Q. Does that sound like it?

A. That sounds like why the meeting was called.

Q. And Mr. Gilfillan had just returned from Washington; is that right?      A. Right.

Q. Or from somewhere? He had been out of town?      A. That's right.

Q. You place that as early in March?

A. Early in March.



(Testimony of O. C. Stegner.)

Q. Now, these letters that were discussed, were any of them shown around in that meeting, that is, to the members of the grievance committee or to anyone?

A. I didn't see the letter, or didn't read it. I mean, I didn't see the letter. I know the letter was there, and Mr. Johnson told me about it.

Q. That is how you knew? A. Yes, sir.

[558]

Trial Examiner Schneider: May I interrupt there, Mr. Esterman? You are going to establish subsequently the date that the letter was sent or received? You see, thus far the witness has only testified that this occurred at about the time notice was received that a petition had been filed. We yet don't know when the petition was filed or when the letter was sent or received.

Mr. Esterman: I will ask you Mr. Nourse or Mr. Sparks if they will stipulate to the receipt of the letter from the Board, dated February 27, giving notice of a petition filed by the I.A.M. on that date, February 27, 1943.

Mr. Nourse: I will have to refresh my memory. I will have to check. I think that letter was received, but I don't know as to what date. My understanding is, and I don't know as to just when it was received, but Mr. Johnson states——

Trial Examiner Schneider: May we have a statement on the record from Mr. Johnson as to when he received the letter?

Mr. Johnson: Do you want me to state?

(Testimony of O. C. Stegner.)

Trial Examiner Schneider: If you will just make a statement as to when you received it.

Mr. Johnson: Yes. I received it about March 6, at 9:45 in the morning.

Mr. Wilson: I would like to state that I am reading from the notice of the filing of petition, which bears the date, March 5, 1943, requesting lists and other data to be [559] furnished not later than 10:00 a.m., March 6, 1943. I think that is the best evidence.

Trial Examiner Schneider: I think that is sufficiently definite.

Q. (By Mr. Esterman): Because it has been some time since we discussed this, I want to get this clear in my mind, Mr. Stegner: What, if anything, was said by you or any of the other officers of the E.M.A. at that time, which you haven't already related?

A. Nothing else discussed there in that meeting.

Q. How long were you in there? Do you know?

A. Possibly half an hour.

Q. Well now, just to refresh your recollection, was there any discussion of A. F. of L. literature?

A. I think that was pro'd and con'd among the officers.

Q. I didn't hear that.

A. I say I think that was pro'd and con'd between the officers and Mr. Gilfillan, as to what was being done.

Trial Examiner Schneider: Being done by whom?

The Witness: By the passing out of these cards on the sidewalk after each meeting.

(Testimony of O. C. Stegner.)

Q. (By Mr. Esterman): Maybe my question isn't clear. I want to know if anything was said about A. F. of L. literature. You say it was pro'd and con'd. Do you mean it was discussed? [560]

A. In other words, we talked of what they were doing.

Q. Now, who talked about it?

A. The officers of the E.M.A.

Q. That was in Mr. Gilfillan's presence?

A. That's right.

Q. Can you recall what anyone said at that time among the officers?

A. Nothing of any importance, outside of——

Q. Well, suppose you let us decide what is important. I would like to have you help us to this extent: Would you tell us what you said, if you said anything, or what Johnson said, if anything, or Pfefer, or Carmen Fauria. Now, if they said something and you don't know what it was, please say so.

A. I don't recall anything they said direct, no, sir.

Q. Now, what did Mr. Gilfillan have to say on the subject of the A. F. of L. literature?

A. I made a statement there before.

Q. Well, tell me again.

A. The statement that he made, for the E.M.A. to get on their toes and combat this election, that they were going to try to demand in the Gilfillan plant.

Q. Well, we heard that.

(Testimony of O. C. Stegner.)

A. That is the statement.

Q. I don't think I made myself clear. Now, you told us [561] that you "pro'd and con'd" about A. F. of L. literature. When I said "literature," I didn't mean "election." You mean literature?

A. As I recall, that on the literature we pro'd and con'd what the A. F. of L. has done, what they did with reference to passing out literature.

Q. Well, you discussed that? A. Yes.

Q. And you said you couldn't remember what the members of the committee said about that. But they did say something; is that correct?

A. Nothing direct that I would want to make a statement about.

Q. I will tell you again that we will have to decide what we consider worth putting in this record. If you don't remember what any of the committee said about A. F. of L. literature, then I want you to say that. Is that the fact?

A. I don't remember. 2

Q. Now, I want you to say what Mr. Gilfillan said, if he said anything in this proing and coning back and forth about the A. F. of L. passing out literature. What did Mr. Gilfillan have to say about that, if anything? Did he say anything?

A. Not that I remember. [562]

Q. I have something else I want to ask you about, if I may. You told us that you solicited memberships for the E.M.A. in the plant?

A. Membership, yes.

(Testimony of O. C. Stegner.)

Q. During working hours and sometimes not during working hours? A. That is right.

Q. You remember that. Will you tell us what you said when you solicited memberships? What you told people? I will ask you first—strike that.

I will ask you first, did you generally tell them the same thing when you solicited memberships, you had a sales talk, didn't you?

A. That is right.

Q. Will you tell us, in substance, what that was, as well as you can remember it?

A. I merely asked them if they belonged to the E.M.A., had they been told about it? If they answered no, I would say, "Well, it is an employees' association. It is not a union. It is called an employees' association. None of the officers get a salary, nobody receives any salary pertaining to our association. It is entirely among the employees. It is voluntary on your part. The dues are only 25c a month. We collect that to maintain our hall rent and literature, and one thing and another. There is no other expense, no other dues or [563] assessments. It is merely an association that the employees maintain for the good of them, pertaining to grievances and things that possibly they feel they have been abused." That is about the gist of the solicitation.

Q. It sounds pretty good. I think I will try it. Well, that is about it.

A. Generally then I proceeded to write their card and ask them for 25c.



(Testimony of O. C. Stegner.)

Q. Well, that rounds out the picture, I would assume?      A. Yes.

Mr. Esterman: That is all.

Cross Examination

Q. (By Mr. Nourse): Now, was that on smoking time or while the men operators were at the benches you made this talk, or the machines you made these speeches?

A. Done at times when I would have time or knew they—there were several new employees in there that needed attention or the delegats couldn't sell, why, I followed it up under high pressure.

Q. Did you high pressure at the machines or smoking time?

A. That would be done, as I say, when I would have time out on my own job, or at smoking time, or noon hour; generally done on smoking time or noon hour.

Q. Would you take a man off a machine to do that?      A. Never. [564]

Q. What is it?

A. If he was working on his machine and I approached him and talked to him while he was working, I would always say, "Don't quit your work. Listen to me and keep on working."

Q. Most of it was smoking time or noon hour, or something of that kind?      A. Right.

Q. This meeting was held, whenever it was in March, that was one that was requested by Mr. Johnson and he asked the officers to get together and go in and see Mr. Gilfillan, didn't he?



(Testimony of O. C. Stegner.)

A. Yes.

Q. When you got in there you talked about a new contract between the company and the E.M.A., didn't you? A. Yes.

Q. And Mr. Johnson said they had word about an election being demanded? A. Yes.

Q. Is that right? A. Yes.

Q. And Mr. Gilfillan said, in substance, didn't he, that if there was going to be an election he didn't want to enter into any contract until he knew whether you or the A. F. of L. represented the employees, is that right? In substance?

A. In substance, yes. [665]

Q. What is it? A. That is right.

Q. And he said then, "If you are going to win the election you better get on your toes."

A. And get going.

Q. Yes. But he wasn't going to deal with either of you if there was going to be an election, until he knew who had won the election?

A. That is right. [566]

### Cross Examination

By Mr. Wilson:

Q. Mr. Stegner, you attended all of the E.M.A. meetings, did you not? A. Yes, sir.

Q. And they had those meetings monthly, did they not?

A. It has been the customary rule the first Monday in every month.

Q. The first Monday in every month. And as a

(Testimony of O. C. Stegner.)

member of the grievance committee you would receive certain requests from different employees throughout the plant, or from your department, of different changes in their work that they would desire, is that right?

A. Yes; over the entire plant.

Q. And the grievance committee would discuss these different grievances that the individual employees would have, would they not?

A. I will make a statement on that. If they had went to their foreman or their superintendent and felt that they were entitled to a change or entitled to more money, and the head of their department ignored their request, it was brought to some member of the grievance committee. We, in turn, have a little form we would hand—if a man, the employee approached me on the subject, I would hand him a form. This [569] form was how long he had been there and what department he was in and how much he was making, and what his grievance was. Then, if I felt, this grievance was brought to me personally and I felt he had a grievance, we immediately called the committee together and went to the head of this department, to see if it couldn't be ironed out.

Q. Do you have the power to hire anybody in the plant?      A. No.

Q. Do you have the power to fire anybody in the plant?      A. No.

Q. Now, these grievances, for example, if it was for a wage increase, you would take it up with the

(Testimony of O. C. Stegner.)

plant superintendent or night or day foreman of the shop, is that correct, or someone in the office?

A. That is right.

Q. Is it a fact that on several different occasions your committee discussed the problems of filing for wage increases with the War Labor Board?

Mr. Esterman: Discussed with whom?

Mr. Wilson: I stated that in my question, discussed among his committee regarding the filing for general wage increases with the War Labor Board.

The Witness: The grievance committee didn't have anything to do with that.

By Mr. Wilson:

Q. Well, did the officers of the E.M.A.? [570]

A. The officers, no. The officers of the E.M.A. didn't have anything to do with that. That was brought in as Exhibit A in our new contract. [571]

#### Recross Examination

By Mr. Nourse:

Q. You have told the Examiner, the gentleman on your right, that Mr Lundberg was in charge of these men. What did Mr. Lundberg do, being in charge of them?

Mr. Nourse: I am going to lead this witness. He isn't mine.

Trial Examiner Schneider: You have my permission. It is very difficult to get a connected idea.

By Mr. Nourse:

Q. As a matter of fact, he went to each machine,

(Testimony of O. C. Stegner.)

didn't he, and set that machine, set the tools in it and fixed the work where it would start, so as to properly mill the piece of material that the man was to work on? Is that right?

A. Commonly known as a set-up for a machine.

Q. These men under him were inexperienced, weren't they, [576] unable to set it up?

Mr. Esterman: If he knows.

By Mr. Nourse:

Q. If you know.

A. I wouldn't—no, I wouldn't answer that exactly. They naturally became more experienced as they went along.

Q. He would go to the men that couldn't set it up and do these details, put in the tools and fix it so it would start and stop at the right place, and so the lubrication was going over the cutting tool and the material correctly? And do that from machine to machine? Is that right?

A. I would still have to answer it that he was the set-up man, that he instructed them what to do.

Q. How to do or what to do?

A. How to do it.

Q. Is that what you mean by being in charge?

A. That is right.

Mr. Nourse: That is all. [577]

Mr. Esterman: At this time, Mr. Examiner, I have a motion, a written motion which I wish to submit in the form of an exhibit, and I ask the reporter to mark it as Board's Exhibit next in

order. It is a document entitled, "Motion to Amend Complaint".

(Thereupon, the document referred to was marked as Board's Exhibit No. 8, for identification.) [585]

### BOARD'S EXHIBIT No. 8

United States of America  
Before the National Labor Relations Board  
Twenty-First Region  
Case No. 21-C-2281

GILFILLAN BROS., INC., a Corporation

and

INTERNATIONAL ASSOCIATION OF MACHINISTS DISTRICT LODGE #94, for and on behalf of LODGE #311, AMERICAN FEDERATION OF LABOR

### MOTION TO AMEND COMPLAINT

Now comes the National Labor Relations Board, 21st Region, by William B. Esterman, Attorney, and moves the Examiner that the Complaint heretofore filed and introduced in evidence in these proceedings as Board's Exhibit 1 (c) be amended in the following respect:

Strike from the Complaint the whole of paragraph number 6 beginning at the bottom of page 2 thereof, and substitute therefor

6. Respondent, while engaged in the course of conduct described in paragraph 5 above, did on or

about May 1, 1943, enter into an alleged collective bargaining agreement with the Association, by the terms of which said agreement the Association was recognized as exclusive collective bargaining representative of respondent's employees. Said agreement was executed while the respondent was engaged in assisting, encouraging, and maintaining the contracting labor organization, as more fully described in paragraph 5 above, and said agreement, therefore, was and is invalid, illegal, void, and of no effect, and should be set aside in order to effectuate the policies of the Act.

Paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, and 13 to remain unchanged.

Dated at Los Angeles, California, this 7th day of July, 1943.

NATIONAL LABOR RELATIONS BOARD, 21st Region  
By WILLIAM B. ESTERMAN  
Attorney

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### PROCEEDINGS

Trial Examiner Schneider: The hearing will be in order.

Mr. Esterman, are you ready to proceed?

Mr. Esterman: Yes.

Trial Examiner Schneider: Mr. Nourse, Mr. Wilson, since the Board is now ready to proceed with its case, are you still pressing your motions for dismissal made on Monday?



Mr. Nourse: We are.

Trial Examiner Schneider: Mr. Wilson?

Mr. Wilson: Yes, I am.

Trial Examiner Schneider: Then would you mind restating your grounds at this time for that motion?

Mr. Nourse: I will very frankly state, to the Trial Examiner, that I don't quite understand the Act of Congress under which the appropriation was made and limited, but it seems to me the intent of that Act, that no proceedings should be prosecuted by the Board which includes contractual relationship existing between a company and a union, a certified union; a union certified by the Board, such as the E.M.A. in this case.

Trial Examiner Schneider: May I interrupt, Mr. Nourse?

Mr. Nourse: Yes.

Trial Examiner Schneider: The matters which you are now stating were not the grounds for your original motion to dismiss, are they? [590]

Mr. Nourse: Very frankly I didn't state them then because there was a great deal of secrecy in this hearing. There weren't any grounds stated for the motion of the continuance. We couldn't be advised what was in the back of counsel's mind or if there was anything in the back of the Trial Examiner's. We were left entirely in the dark.

We made our motion to dismiss. Now, it seems that the motion for indefinite continuance was based on the fact this Act was in the offing or they didn't know whether or not they had any jurisdiction.

Trial Examiner Schneider: You are referring to the Appropriations Bill?

*The Nourse:* The Appropriations Bill. The Appropriations Bill seems to me is the design of Congress to prevent, to deprive the Board of the power to proceed in a matter where a contractual relationship between a certified union and the company has been in existence for more than three months. It appears that this relationship was continuously in existence since 1937. While the contract is not in the record, the exhibit not in the record, the evidence does show the contractual relationship started when the E.M.A. was certified as the bargaining agent for the employees and has continued at all times since then, and a new contract was entered into about May, I believe. That is in the record but the contract is not. [591]

Now, I cannot see how this Board can proceed under a charge that this contractual relationship was entered into with the union, which was then, in 1937, a party to the charge, company dominated or company interfered with, and attack that contractual relationship on that ground. [592]

Trial Examiner Schneider: Well, is it your contention, Mr. Nourse, that if as the original complaint of the Board alleges or appears to allege in Paragraph 6 that a contract was made between the E.M.A., and the company on or about April 30, 1943, that the Board would have no jurisdiction to investigate with reference to that contract?

Mr. Nourse: That is my position, if that contract, as I contend, was merely a continuation of a

contract entered into with the certified union, the only union with which the respondent could and did deal.

Trial Examiner Schneider: Well, is not that a question of fact to determine by testimony and evidence?

Mr. Nourse: I think you are right, but I think on the motion to dismiss you should take evidence upon that point before proceeding with this matter.

You have here a question of fact as to whether or not this contractual relationship was entirely a new thing entered into, or merely a continuation of something that had been in existence not only a year, but five years, and I don't believe that this Board can proceed until it knows, or should properly proceed until it knows what the situation is before it; and I should think that the Examiner would believe, and counsel would believe, that they were proceeding at a good deal of risk. [593]

Mr. Nourse: I offer to prove, in support of my motion to dismiss, that in the year 1937 E.M.A. was certified, after an election conducted by the National Labor Relations Board, as the bargaining agent of Gilfillan Brothers; that no other union has since been certified; that in 1937 a contract was entered into, negotiated with this bargaining agent E.M.A. by Gilfillan Brothers, and that contract has been continued from year to year since that time, sometimes by merely endorsement of a memorandum that it would continue for the following year, until 1943, at which time under the contract existing, which was for the date April, '42 to April 30, 1943, there

was negotiated a continuation of that contract with wage scales and classifications which were fixed by the contract which bore a date of April 1942, that it was then agreed that that contract should be continued but on the terms and conditions containing the wage scales and classifications that were fixed by the parties under the preceding year's contract; that the contract now in effect is and it specifically states that it is a continuation of that contract relationship. [596]

Trial Examiner Schneider: Yes. Can you state for what period the renewal made in April, 1942, was entered into?

Mr. Nourse: One year; each one, every year that was true.

Trial Examiner Schneider: That is in April 1942 you agreed to renew the contract for a period from 1942 to——

Mr. Nourse: To April 30th.

Trial Examiner Schneider: To April 30th, 1943?

Mr. Nourse: Yes.

Trial Examiner Schneider: Now, is it your position [597] that at the end of 1943—at the end of April, 1943, that that contract, that same contract still continued in existence in legal effect? [598]

Mr. Nourse: Yes. My position is that about the first of April, 1943, the parties then, under the terms of the existing contract, agreed on certain terms and conditions, which were to follow through the year. That is, wage classifications, rates of pay, seniority; matters of that kind. And that then as of May 1st,

I think several days later than May 1st, but referring back to that contract, the present instrument was executed.

Trial Examiner Schneider: Is this a fair statement of what you deem to be the facts with respect to renewals, that in April, sometime in April or early in May, 1943, you entered into an agreement with the E.M.A. for a one year period from that date, of 1943, forward, and incorporated in that agreement, by reference or otherwise, the terms and conditions, other than the termination date provided in the previous contracts?

Mr. Nourse: Not all of them. Some of them were deleted. And others were carried through. But in addition to that, that during the continuation of the contract of April, which was dated sometime in April, 1942, and before its expiration they agreed on certain terms and conditions to be carried on through the following year, as to wage scales, rate classifications, and seniority rights, and then with reference to the old contract, and with an expressed statement that was a continuation of the contractual relationship. [599]

Those wage scales and classifications and matters of that kind were set forth in a new instrument which meant merely a continuing, in effect, of the old contractual relationship.

Trial Examiner Schneider: Well then, am I correct in this respect, that your contention is that the contract which was in existence in April, 1942, to April, 1943, was a contract incorporating certain



terms and conditions of employment contained in previous contracts?

Mr. Nourse: Yes.

Trial Examiner Schneider: Adding certain new ones?

Mr. Nourse: You mean 1942, now?

Trial Examiner Schneider: From 1942 to 1943.

Mr. Nourse: I don't believe the ones from 1942 to 1943—I am talking from memory—contain anything that the one from 1941 to 1942 didn't contain.

Trial Examiner Schneider: Very well. So that it contained terms and conditions of employment taken from the contract of previous years?

Mr. Nourse: My memory is it was merely a letter binding upon us, for the following year.

Trial Examiner Schneider: And differing from the previous contracts by reason of a statement that it was effective from April, 1942 to April, 1943?

Mr. Nourse: I don't understand that. [600]

Trial Examiner Schneider: Well, did the agreement, which was in effect from April, 1942 to April, 1943, have a statement that it was effective from April, 1942 to April, 1943?

Mr. Nourse: April 30, yes.

Trial Examiner Schneider: It had a termination date of April 30, 1943?

Mr. Nourse: Yes.

Trial Examiner Schneider: Now, the agreement which was made in April, 1943, incorporated certain provisions regarding terms and conditions of employment taken from the April, 1942, contract?

Mr. Nourse: Certain ones that, during the con-



tinuation of that contract, had been agreed upon between the parties. They were not the original terms of it. In other words, the parties were free to amend their contract during the year, to come to new wage agreements and things of that kind. That is specifically provided for in the 1942 contract. They did do so. Those things, after having been agreed upon, and agreed they would continue during the coming year, were incorporated in the instrument which constituted the evidence of the contract between the parties, and which is undated, which recites it should be effective as of May 1, 1943. Do I make it clear? [601]

Trial Examiner Schneider: Well, I will pass that for the moment and go on to the Board's motion to amend the complaint; Board's Exhibit 8.

I will ask, Mr. Nourse, do you have any objection to the amendment of the complaint?

Mr. Nourse: Well, I don't see how I could have, on the face of it. When I say how I could have, could I make myself clear?

They allege here that this contract was entered into on or about May 1st. As far as an allegation of pleading goes, as a pleading goes, that is all right. I want to make it clear that we deny that. We claim it was a continuing contractual relationship, and that you can't litigate as to this without affecting the whole of that contractual relationship. But he says it was May 1, 1943. And I presume that if this goes in it will be deemed denied. [608]

Trial Examiner Schneider: We will proceed.

The Board's motion to amend the complaint, Board's Exhibit 8, is granted. [610]

Mr. Esterman: The Board will stipulate that on May 6, 1941, a charge was filed with the 21st Regional Office, by the International Association of Machinists, Welders, and Production Workers, Local 311, A.F.L., alleging, first, that Gilfillan Bros., Inc. "have encouraged and otherwise interfered with the formation of the E.M.A.";

Second, that the company did, through its officers, agents and employees on or about April 29, 1941, discriminatorily discharge one Frank C. Thee because of his activity in [614] behalf of the charging union;

And finally that the company, through its officers agents, and employees, by the acts just recited, and by other acts and conduct interfered, restrained and coerced its employees within the meaning of Section 81 of the Act.

The Board will stipulate further, that on the recommendation of Field Examiner Cameron, and with the approval of the Regional Director, of the 21st Region, the matter was settled substantially as follows: The charge was withdrawn by the charging union on August 18, 1941, and the company on its part, in response to a letter from the National Labor Relations Board, 21st Region, dated November 7, 1941, reading as follows:

Gilfillan Bros. Inc.

1815 Venice Blvd.,

Los Angeles, Calif.

Gentlemen:           “Att: Mr. S. W. Gilfillan

“In settlement of this case and pursuant to our conference several weeks ago, I suggest that you address a letter to me at the National Labor Relations Board, stating

“(1) That the company agrees that it will instruct its foremen and lead men not to accept places on committees of labor organizations having members in the employ [615] of Gilfillan Bros. Inc., and not to influence the employees with respect to union affiliations in any other manner;

(2) That the Company agrees that it will not in any manner dominate or interfere with the administration of the Employees Mutual Association or any other labor organization having members among its employees;

(3) That the company will post a copy of its letter in a conspicuous place in its establishment for a period of sixty days.

“Very truly yours,

(Signed) KENNETH CAMERON

“Field Examiner”

wrote a letter on November 11, 1941, addressed to Mr. Kenneth Cameron, at the 21st Region in Los Angeles; said letter being in form and contents as follows:

“Mr. Kenneth Cameron

“National Labor Relations Board

“TwentyFirst Region

“U. S. Postoffice and Courthouse

“Los Angeles, California

“Dear Mr. Cameron:

“In answer to your letter of November 7, 1941, [616] please be advised that this company agrees;

“1) That it will instruct its foremen and lead men not to accept places on committees of labor organizations having members in the employ of Gilfillan Bros. Inc., and not to influence the employees with respect to union affiliations in any other manner;

“2) That it will not in any manner dominate or interfere with the administration of the Employees Mutual Association or any other labor organization having members among its employees;

“3) That it will post a copy of this letter in a conspicuous place in this establishment for a period of sixty days.

“Very truly yours,

“GILFILLAN BROS. INC.

“S. W. GILFILLAN,

“President.” [617]

The Board will further stipulate that a carbon copy of the company's letter of November 11, 1941, was immediately posted by Gilfillan Brothers.

That in the matter of Gilfillan Brothers, Inc., and United Electrical and Radio Workers of America, Local 1421, Case No. 21-R-111, there was filed before the National Labor Relations Board, Twenty-First Region, on the 1st of May, 1937, a Petition for Investigation and Certification of Representatives, pursuant to Section 9 (c) of the National Labor Relations Act.

That pursuant to that petition an election was held under the supervision of the National Labor Relations Board on May 19, 1937, which resulted in 33 ballots being cast for Local 1421; 71 ballots cast for Employees Mutual Association.

That the results of that election were certified and it was certified as having been conducted in a fair and impartial manner by the Field Examiner for the National Labor Relations Board and representatives of Local 1421, representatives of the Employees Mutual Association and of representatives of Gilfillan Brothers.

And that thereafter, after said election, the results thereof were certified to by the Twenty-First Regional office of the Board, as required by Subdivision C of Section 9 of the National Labor Relations Act.

That this stipulation supercedes any stipulation on the [618] record relating to the subject of the 1937 election.

Mr. Nourse: I accept the stipulation.

Mr. Wilson: I accept the stipulation. [619]

No. 10688

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.  
GILFILLAN BROS., INC.,  
Respondent.

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Transcript of Record  
In Two Volumes  
VOLUME II  
Pages 343 to 627

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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board

FILED

AUG 19 1944

PAUL R. O'BRIEN,  
CLERK





No. 10688

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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board



OSWALD LUNDBERG

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Esterman:

Q. Your name and address, please?

A. Oswald Lundberg; 634 West 101 Street.

Q. You will have to talk up so they can hear you over there.

Mr. Nourse: Talk to my hat back there, and then the reporter can hear you and I can, too; not through it but to it.

Q. (By Mr. Esterman): You are employed by Gilfillan Bros. Inc.?      A. Yes.

Q. How long have you worked for this company?      A. Since May 14, 1927.

Q. Has that been continuously?      A. No.

Q. Will you indicate what breaks there were, just briefly?

A. For a three month period, I believe, let's see, in 1931 at U. S. Motors, I worked at U. S. Motors at that time.

Trial Examiner Schneider: I didn't quite understand that. Did you say you were employed first in 1937?

The Witness: 1927. [622]

Trial Examiner Schneider: I beg your pardon.

The Witness: And I worked at a restaurant supply house for about six weeks, that was in one of the slack periods, I don't know just when that was, in '33, I think.

(Testimony of Oswald Lundberg.)

Q. (By Mr. Esterman): Were there any other breaks in your employment with Gilfillan?

A. No.

Q. You have mentioned the only two?

A. Yes.

Q. And other than those periods, then, you have been employed continuously by Gilfillan Bros.?

A. Yes.

Q. Calling your attention to the month of April, 1942, what work were you doing for the company at that time?      A. April, 1942?

Q. That's right.

A. I was working on milling machines.

Q. In what capacity?

A. I was just an operator.

Q. Did you continue to be an operator; did your status change?

A. In around the 1st of May, 1942 I was appointed leadman.

Trial Examiner Schneider: The date?

The Witness: It was in May; I don't recollect the date.

Mr. Nourse: '42 or '43? [623]

The Witness: '42.

Q. (By Mr. Esterman): Appointed by whom?

A. Mr. Cramer.

Trial Examiner Schneider: Mr. Cramer?

The Witness: Yes, sir.

Q. (By Mr. Esterman): What were your duties then?

(Testimony of Oswald Lundberg.)

A. Set up machines and show operators how to run the machines.

Q. Did you supervise the work of any other men?

A. Other than milling machine operators?

Q. I mean on milling machines.

A. Supervise the work on milling machines, yes.

Q. How many men did you supervise?

A. I would say about six.

Q. When you were appointed leadman by Mr. Cramer do you recall what he said to you when he appointed you?

A. No, I don't recall the exact words that he said, no.

Q. Did he use the word "leadman"?

A. Yes, sir.

Q. Did he use the word foreman?

A. Leadman.

Q. Did he use the word foreman?

A. No, sir.

Q. You recollect that?

A. As far as I know he said leadman. I wouldn't say fore- [624] man.

Q. Did you have any girls working under your supervision at that time?

A. Yes, sir.

Q. What did they do?

A. Run hand mills.

Q. And how many of them were there, girls, I mean?

A. Two to three. Usually would come in on the afternoon shift.

Q. Were they regular employees, that is, with



(Testimony of Oswald Lundberg.)

respect to the hand mills, or did they come from some other part of the operation?

A. They come from the burr department, burr bench.

Q. Was this extra help that you would get from time to time as you needed it? A. Yes, sir.

Q. I am speaking of the girls. A. Yes.

Q. The men who worked on the milling machines, and I take it those were power machines, were regular milling machine operators?

A. Yes, sir.

Q. How many machines, milling machines, were there in operation on about May 1 last year?

A. Was that power machines? [625]

Q. Yes.

Trial Examiner Schneider: Excuse me, Mr. Esterman. You are referring to the time at or after he became leadman?

Mr. Esterman: Yes.

The Witness: I would say six machines.

Q. (By Mr. Esterman): You are not including hand mills, then?

A. No, sir. I am including three Cincinnati machines, one Brown & Sharp, Kemp-Smith and Kent-Owens hydraulic mill.

Q. There were how many hand mills, if you know? A. Four.

Q. Now, this was on what shift, please, when you were in charge, or supervised?

A. Day shift.

Q. What hours?

(Testimony of Oswald Lundberg.)

A. 6:00 to 6:00; 6:00 a. m. to 6:00 p. m.

Q. Do you know who was in charge of the mills on the night shift at that time?

A. On the night shift?

Q. Yes.

Mr. Nourse: So I won't have to keep objecting, if you are going to say "in charge"—the witness answers "in charge," I have got to keep objecting. There is no evidence here that he was in charge, in the sense that he was the foreman, or the company delegated man that had power to speak for [626] the company, other than to do the very thing he says he did, that he set up the machine, and that he oversaw the work of certain people on there. If, by your questions, you are putting words into this witness' mouth I am going to have to keep objecting.

Mr. Esterman: I certainly am not putting words in his mouth. Withdraw that question.

Q. (By Mr. Esterman): Is there any distinction in your mind between leadman and foreman? Do you understand they mean the same thing or different things?

A. I would say leadman is a man who sets up machines, and has supervision over those machines. We haven't been informed that we were foremen, so I wouldn't know just how to interpret foreman.

Q. You say that is a leadman, but you don't know what a foreman is?

A. A foreman—the way I get it—has charge of the whole shop, shop foreman.

(Testimony of Oswald Lundberg.)

Q. Did you ever think that you were a foreman?

A. No, sir.

Q. Did you ever tell anybody you were a foreman?

A. No, sir.

Q. Who had the job corresponding to yours on the night shift, the same machines?

A. James Clark. [627]

Q. And I mean, of course, at that time.

A. Yes.

Q. Now, at that time there were three shifts, were there not?

A. That is right.

Q. That is, the day and night, and the swing shift—is that what it was called?

A. Yes.

Q. Who had the corresponding job, that is, corresponding to yours, on the other swing, third shift?

Mr. Nourse: Swing shift?

Mr. Esterman: Swing shift.

The Witness: There wasn't a leadman on the swing shift, to my knowledge; that was up to Jim Clark and I see that there was enough work for the swing shift, left on the machine, on the swing shift, to go through. There was no leadman that I can recollect.

Q. (By Mr. Esterman): Now, how long did you continue in that capacity, the one we have been discussing?

A. Until about three months ago.

Q. That would be around the 1st of April, 1943, would it not?

A. Yes.

Q. Who took your place?

(Testimony of Oswald Lundberg.)

A. Jim Clark. [628]

Q. And what have you been doing since that time?

A. I worked on a turret lathe about six weeks, and I am working on an automatic screw machine now.

Q. Do you have any employees under you?

A. No, sir.

Q. You haven't had any since the time that Jim Clark took your job, is that right?

A. No, sir.

Q. That is correct, isn't it?

A. That is right.

Q. Now, you are a member of the E.M.A., are you?

A. Yes, sir.

Q. And when did you become a member?

A. Around 1938; it was in '38 or '39.

Q. Have you paid dues to the E.M.A.?

A. Yes, sir.

Q. Did you pay dues in May?

A. Yes, sir.

Mr. Nourse: What materiality is this, sir?

Mr. Esterman: You will find out, counsel.

Mr. Nourse: I think it is entirely immaterial to any [629] issue here, whether he paid dues to the E.M.A. or not.

Mr. Esterman: I don't want to discuss this witness' testimony before I finish with it. I prefer not to answer that question until a little bit later.

Mr. Nourse: I object to the evidence, it is entirely immaterial to any issue here. [630]

(Testimony of Oswald Lundberg.)

Trial Examiner Schneider: These are foundation questions?

Mr. Esterman: Well, this last question might be so considered, yes, because the ultimate fact, I don't think, is of any consequence. We can call it a preliminary question, yes.

Trial Examiner Schneider: On your statement I will permit the witness to answer now, subject to a later motion to strike.

Q. (By Mr. Esterman): Have you paid dues every month this year? A. Yes, sir.

Q. To the E.M.A.? A. Yes, sir.

Mr. Esterman: This witness seems a little uncertain about some matters, and I propose to refresh his recollection by calling his attention to prior statements made on subjects I have already examined him on. I am showing counsel a copy of the statement I propose to show him.

Mr. Nourse: Do you want to look at it with me, Mr. Wilson? We will save time.

Mr. Wilson: Yes. [631]

Trial Examiner Schneider: We will take a short recess while Mr. Nourse and Mr. Wilson are examining the document referred to by Mr. Esterman.

(A short recess taken.)

Trial Examiner Schneider: The hearing will be in order.

Mr. Esterman: Will you mark this for identification as Board's Exhibit next in order?

(Thereupon, the document referred to was marked as Board's Exhibit No. 9, for identification.)



(Testimony of Oswald Lundberg.)

Mr. Nourse: I am going to move right now, before you offer that, to strike the testimony of this witness as to the payment of dues by this witness covering the period from January 1st to date, of this year. I don't see he has connected it up with anything that is preliminary to anything. You can't set up a straw man and knock him down by this statement, even if this statement said otherwise.

[632]

Trial Examiner Schneider: The issue in this case raised by the Board's complaint and the respondent's answer is partly whether or not certain employees are supervisory. Whether you call them leadmen, foremen, superintendents, or vice-presidents is of no materiality; the question is whether or not they are supervisory employees. Therefore, evidence of specific facts relating to whether they are or are not supervisory employees is relevant and material. [634]

Trial Examiner Schneider: With respect to your motion [635] to strike, is it your contention, Mr. Esterman, that the fact that Mr. Lundberg paid dues to the E.M.A. after he had ceased to be a leadman is nevertheless evidence of supervisory participation in the affairs of a labor organization?

Mr. Esterman: No.

Trial Examiner Schneider: In such case I will strike the testimony of the witness as to any dues payments he made to the E.M.A. after he ceased to be a leadman.



(Testimony of Oswald Lundberg.)

Mr. Esterman: According to his testimony that would be after the first of April, 1943, or thereabouts.

Trial Examiner Schneider: I am assuming in making that ruling that your contention is that up until the time Mr. Lundberg ceased to be a leadman he was a supervisory employee.

Mr. Esterman: Indeed it is, yes.

Trial Examiner Schneider: Very well.

Mr. Esterman: I might add, if it enlightens counsel on my theory of the case, that in my view it must be determined from the whole record whether these people spoke for the company or not. Labeling a man doesn't determine his status for the Board's purposes, and the company can't hide behind a designation or a title. The question is what does the man do and what do the other people understand him to be. I conceive those are relevant and pertinent matters. [636]

Q. (By Mr. Esterman): I show you, Mr. Witness, a statement consisting of five pages and ask you if this is your signature on the last page with the date April 9, 1943? A. Yes, sir.

Q. I show you an exact carbon copy thereof which has been identified as Board's Exhibit 9, and call your particular attention to—would you prefer to read it through before I discuss it with you?

A. No, that is O.K.

Q. In the middle of the first page, and ask you if this refreshes your recollection as to what you were

(Testimony of Oswald Lundberg.)

appointed to sometime in April, 1942? Does that help you remember?

A. Well, I probably did say "foreman."

Q. You did say "foreman," didn't you, in this statement? A. Yes, sir.

Q. What was your understanding at the time you made this statement with reference to the word "foreman"? What did you mean to convey by that?

A. Leadman.

Q. What did you mean to convey by the word "forman"? Do you mean you used the word "foreman" to mean leadman? A. Yes, sir.

Q. Did you use the word "leadman" anywhere in this statement? [638]

A. I don't remember.

Mr. Nourse: The statement speaks for itself, and if he hasn't even read it I don't think that is a fair question.

Mr. Esterman: We will withdraw it.

Q. (By Mr. Esterman): At the time you made this statement did you also think of yourself as a leadman as well as a foreman?

Mr. Nourse: That question is not a fair question, and it assumes facts not in evidence whether he has thought himself as a foreman or leadman. He never testified that he thought of himself as a foreman.

Mr. Esterman: We will withdraw the question.

Q. (By Mr. Esterman): Look at the top of Page 2, please, and I ask you if that refreshes your recollection as to Mr. Clark's capacity on the night shift over the mills?

(Testimony of Oswald Lundberg.)

A. Yes, sir, that's right.

Q. Which is right? You said he was the foreman, didn't you?

A. Yes, sir, I did. I am referring to my statement here that I did say he was a foreman.

Q. Didn't you mean what you said in the statement? A. I signed it. I must have.

Q. Well, you can tell me whether you meant it or not, can't you? A. Yes, sir, I did. [639]

Q. Now, after looking at the statement, you recall that on April 9, the date you signed it, according to your testimony, you referred to yourself as a foreman, in April, 1942; [640] later, in April, 1942. Now, is there any difference in your mind, after looking at that, between the words foreman and leadman?

A. Well, there is no difference in my mind according to my statement there, but my thoughts are leadman is a man that sets up machines and sees they are run right; and a foreman is the man that has charge of the shop, as I see it.

Q. Yes. Is that the way you saw it on April 9?

A. No, I probably said foreman.

Q. Have you changed your mind since April 9th? That is what I am trying to find out.

Mr. Nourse: You mean as to whether he is a foreman or leadman?

Trial Examiner Schneider: Whether he was?

Mr. Esterman: Yes.

Q. (By Mr. Esterman): Have you changed your mind or not, whether that is right?

(Testimony of Oswald Lundberg.)

A. I know what I was. I was a leadman.

Q. I am not suggesting that you are misrepresenting, I am trying to find out what you thought at that time and whether you have changed your mind. Have you changed your mind since you signed this statement, as to what your status was?

A. Have I changed my mind I wasn't a leadman, is that the question?

Q. No. You stated, on April 9, that you were a foreman. [641] And I gather from what you have told us here the last few minutes that you distinguish between the leadman and the foreman. You don't think they are the same thing?

A. No, sir.

Q. All right. Now, today you told us you were a leadman. A. That is right.

Q. Have you changed your mind since April 9th as to what you were in April, 1942?

A. I was instructed that I would be a leadman on milling machines. If, in this statement, I said "foreman," I was wrong there, as far as foreman is concerned.

Q. You mean you didn't intend to use the word "foreman"? A. No, I did not.

Q. Will you explain how it got in there then?

A. Well, I think there is—in this statement I think there is a paragraph stating that leadmen will get 15c more an hour more than men under them. Is that right?

Q. Yes, there is, on Page 1.

(Testimony of Oswald Lundberg.)

A. That was why I was instructed I was a leadman.

Q. You don't think you were a foreman in April, 1942?      A. No, sir.

Q. You still think there is a difference between a foreman and a leadman?      A. Yes, sir. [642]

Q. Now, have you collected dues in the shop on behalf of the E.M.A. at any time?

A. I haven't collected the dues from person to person, no.

Q. But you have handled the dues, have you not, from Mr. Bucknell and turned them over to Mr. Pfleger, the secretary—or treasurer of the E.M.A.? You have, at various times, done [643] that, have you not?

A. I turned them over to Mr. Stegner.

Q. Stegner.      A. That is right.

Q. I beg your pardon. For how long a period have you been doing that?

A. I would say a year or so, probably.

Q. As a matter of fact, you were president of the E.M.A., were you not, from sometime in 1941 until about the 1st of April, 1942?

A. That is right.

Q. Are you acting on any committees at this time?      No, sir.

Q. Have you acted on any committees of the E.M.A. in the last year?      A. No, sir.

Q. Now, have you any knowledge of Mr. Bucknell's dues collections on behalf of the E.M.A.?

A. No, sir.



(Testimony of Oswald Lundberg.)

Q. Do you know whether he collects dues for the E.M.A. or not?

A. He does collect dues, I know he does collect dues for the E.M.A. At the time he collected them he handed them to me in a sealed envelope, and I handed them to Mr. Stegner.

Q. Do you know if he did that at someone's request or not? [644]

A. No, I don't.

Q. Do you know whether anyone told him to do it?

A. No, sir.

Cross Examination

Q. (By Mr. Nourse) Referring to Board's Exhibit No. 9, which is your statement, Mr. Lundberg, prior to that statement you had an interview with Mr. Ogran of the National Labor Relations Board, had you not, talked with you?

A. Yes. [645]

Q. (By Mr. Nourse) Did you have any discussions with Mr. Ogran as to any distinction between a leadman and a foreman?

A. No.

Q. Did he ask you whether or not you were a foreman?

A. To be truthful, I don't remember.

Q. All right. Now, when you read this statement, with the word foreman in it, and signed it, did it come to your mind that there was any attempt made to show you as the head of the shop, by the word "foreman"?

A. No, sir.

Q. Having any other duties other than that of a leadman in the shop?

A. No, sir.

Q. And you read it through for the substance of



(Testimony of Oswald Lundberg.)

the statement as to the facts in there, and not as to terms used, when you signed it?

A. That is right.

Mr. Esterman: I am going to object to that. He read it through. He said he read it through. If counsel is going to qualify that, I would like to have him show me how he can. He read it through.

Mr. Nourse: What he had in mind when he read it through. [646]

Mr. Esterman: Let him ask him that. Let him not suggest to him what he read it through for. I am simply objecting to counsel testifying. If he wants to find out whether the man sent it in with reservations, or something of that sort, let him ask. I object to his making suggestions to the witness or summing up his testimony or counsel testifying for him. Even if that were a fact I don't see where it is material. It is his statement. He signed it. He read it and he mailed it in.

Mr. Nourse: Have you finished?

Mr. Esterman: Yes.

Mr. Nourse: I think it makes quite a difference in what the man had in mind when he read the thing. Did he have in mind reading the statement for facts or the definition of terms; otherwise it would be quite a tricky statement.

I will reframe the question.

Q. (By Mr. Nourse) Did you have, at the time this statement was signed and at all times while you were acting as set-up man, or doing the duties you have described, have a foreman on the day shift?

A. Yes, sir.

(Testimony of Oswald Lundberg.)

Q. Who was that? [647]

A. Mr. Kramer.

Q. What was Mr. Whittet?

A. Mr. Whittet was the foreman, Mr. Kramer was the superintendent.

Q. The superintendent——

A. That is right.

Q. ——on the day shift?

A. That is right.

Q. What were you known as then in the shop?  
What were you called among the men?

A. Leadman.

Q. Were you ever called foreman?

A. Not that I know of, no.

Q. Did you believe that Mr. Ogran, when he used the word “foreman” in the statement he mailed out to you( intended to designate you as someone having the duties such as Mr. Whittet or Mr. Kramer?      A. No.

Q. Or to designate you other than one having the duties you described to him?

A. That is right.

Q. And the facts you gave him as to what you did and as to things that had been said to you, and what you had done, in this statement, were true and are true, to the best of your knowledge? [648]

A. Yes, sir.

Q. Well, was this a transcript of just what you said, or was this merely a resume which was written up, by Mr. Ogran, as the substance of your statement?      A. It was a resume.

(Testimony of Oswald Lundberg.)

Q. Now, was there a foreman also on the night shift there?      A. Yes.

Q. Who was that?      A. Walters.

Q. What does the foreman do?

A. The foreman has charge of the shop, of the complete shop; he has charge of the turret lathes, the drill presses, the buffers, and the automatics.

Q. Does he come around and oversee the work that you do?      A. That's right, he does.

Q. And other set-up men? I am going to keep away from this controversial word. Other set-up men?      A. Yes, sir.

Q. And overlook the work that the people on the machines are doing?      A. Yes, sir.

Q. And is this foreman the one to whom people on whose machines you are setting up are referred in case they have any question to raise as to wages or anything like that?      A. That's right. [649]

Q. And if a man wants to get off during a shift, does he see you or does he see the foreman?

A. He usually sees his leadman and then the foreman.

Q. In other words, he says to you—what does he say to you?

A. Well, probably a man wants off in the afternoon, he says he is going to see the foreman, he tells the leadman that he is going to see the foreman and have the afternoon off.

Q. That is, he explains to you why he is leaving his machine?      A. That's right.

Q. Why did you take these dues in a sealed envelope and deliver them from one man to another?

(Testimony of Oswald Lundberg.)

A. Because we come in at six o'clock in the morning, and Mr. Bucknell leaves at six, and Mr. Stegner doesn't come in until eight o'clock in the morning, so I would take the dues from Mr. Bucknell and give them to Mr. Stegner so that Mr. Bucknell could contact Mr. Stegner.

Q. If you have an experienced man—you are on what? Milling machines? A. That's right.

Q. If you have an experienced milling machine operator on your shift who is able to set up his tools and set up the job, what do you do as to him? [650]

A. Well, you usually hand an experienced man the print, the next job that is supposed to go on the machine, and he sets it up accordingly. You oversee it; that is the leadman's job to see that it is done right.

Q. In other words, when he is through you come back to see that his tools are set up right and watch a piece go through?

A. Check the piece that goes through.

Q. As to others, what do you do, those that are not so experienced and able to set up?

A. Well, you set up their machines and check their machines three or four times in a day, that is our job.

Q. What does setting up consist of on a milling machine?

A. That means—well, to take the set-up off the machine, that is the present set-up that you have on the machine, and put on your new set-up. There is all kinds of different set-ups. I wouldn't know

(Testimony of Oswald Lundberg.)

just how to explain that. Usually put the vise on the machine and change your cutters on it, your arbors and the speeds and feeds, and your spindle feeds.

Q. Do you have anything to do with blueprints in doing that?           A. Yes.

Q. Just consider that the Examiner doesn't know anything more about it than I do, and as if you were going to tell somebody; you are sitting down talking to a Charley White, or somebody, and telling him what you do in the plant; just [651] forget you are on the witness stand, get into this thing.

A. In regards to setting up a machine?

Q. Yes.

A. Well, first you take the present set-up off the machine, and you go and get your blueprint and the material you are going to run, and you decide what is the best way to make your set-up for the most production on that print, and you probably need to change your cutters on the machine that is on the spindle, and you have to change your speeds and feeds for your spindle, and your table on your machine. A mill has a flat table where you mount your fixture on the table to hold your parts, whatever you are cutting. That's about the best I can explain it.

Q. An experienced mill hand, he does all those things himself?           A. That's right. [652]

Q. And with the inexperienced, those who come there who haven't the ability to do that, the set-up man does it for them?



(Testimony of Oswald Lundberg.)

A. He sets up the machine and shows the operator how to operate the machine, how to put his parts in the vise or whatever it may be, and he shows them what lever to pull.

Q. By "parts" you meant he material to be milled?  
A. The material to be milled.

Q. What parts to pull?

A. What levers to pull and what buttons to push. That is all there is to it.

Q. In other words, the inexperienced man then, as I take it, after you set up the machine, puts in the piece to be milled, and pushes the button, or pulls a lever, and then takes that piece out and replaces it?  
A. That's right.

Q. You say there was no set-up man on the swing shift?  
A. No, there wasn't.

Q. So that if the swing shift was following your shift you would set up—have all the machines set and the material set out so inexperienced operators would go right through the shift without any *any* over them?

A. We would try to have all the machines set up for the swing shift, and that is what they did, the swing shift come in and the men run their own machines. There was some men on [653] the shift that was more experienced than others, and we would tell them how to run the machines, and they would help the less experienced men.

Q. But they had no set-up man to go by and overlook their work at all?

A. Not to my knowledge, no.



(Testimony of Oswald Lundberg.)

Q. I mean no one known as a set-up man or leadman? A. No, sir.

Q. During the time you were president of the union what position did you fill?

A. I was milling machine operator. [654]

#### Redirect Examination

Q. (By Mr. Esterman) Calling your attention to Board's Exhibit 9, for identification, and referring specifically, to the sixth line from the bottom of the page on Page 1, quote, "I did not have any time for production work"; what did you mean by that?

A. That it took all my time to set up the machines and keep checking the machines and seeing that the parts come out right.

Q. So that you didn't have any time to do the actual work on the machines yourself?

A. No, I didn't operate a machine, no, sir.

Q. Now calling your attention to Page 3, the paragraph beginning, "While I have been foreman over the mills, I have [655] been very careful not to talk in favor of the E.M.A. or against the C.I.O. or the A.F. of L.," and continuing.

A. That's right.

Q. Will you look at that paragraph, please?

A. Yes.

Q. And tell me if that was the subject of any conversation between you and Mr. Ogran; that is, did Mr. Ogran discuss this with you?

A. Yes, sir.

(Testimony of Oswald Lundberg.)

Q. And I take it he asked you whether or not you did any talking for or against the unions?

A. Yes.

Q. And you told him no? A. That's right.

Q. And did you have any understanding as to why those questions were asked you?

A. No, sir.

Q. So you don't attach any significance or meaning to that paragraph, then, do you?

Mr. Nourse: I don't think that necessarily follows, and it assumes facts not in evidence at all.

Mr. Esterman: Strike that.

Q. (By Mr. Esterman) You were careful not to talk about the unions, E.M.A. or the C.I.O. or the A.F. of L., were you not? [656]

A. While I was foreman—or leadman, yes, sir.

Q. You were very careful weren't you?

A. Yes, sir.

Q. Why?

A. Well, there was a bulletin placed on the board that no leadman or foreman or anyone—a company man, in other words, was allowed to hold any office in the E.M.A., that is why I was so careful not to instruct anyone as their beliefs in E.M.A. or C.I.O. or A.F. of L.

Q. Where did you think you fitted in that notice? What did you think your position was then?

A. Well, I was a leadman, I was not allowed to—as far as I know I wasn't allowed to instruct anyone to go to E.M.A. meetings or A.F. of L. meetings or C.I.O. meetings. [657]

(Testimony of Oswald Lundberg.)

Recross Examination

Q. (By Mr. Nourse) I show you this instrument which is marked Respondent's Exhibit 10 and ask you if that is the letter you saw on the board which you referred to in your [658] testimony? A. That's right, it is.

Mr. Nourse: I offer it in evidence.

Mr. Esterman: No objection.

Mr. Wilson: No objection.

Trial Examiner Schneider: There being no objection, it may be received.

(Thereupon, the document heretofore marked Respondent's Exhibit No. 10 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 10

November 11, 1941

Mr. Kenneth Cameron

National Labor Relations Board

Twenty-First Region

U. S. Post Office and Courthouse

Los Angeles, California

Dear Mr. Cameron:

In answer to your letter of November 7, 1941, please be advised that this company agrees:

1) That it will instruct its foremen and lead men not to accept places on committees of labor organizations having members in the employ of Gilfillan Bros. Inc., and not to influence the employees with respect to union affiliations in any other manner;

(Testimony of Oswald Lundberg.)

2) That it will not in many manner dominate or interfere with the administration of the Employees Mutual Association or any other labor organization having members among its employees;

3) That it will post a copy of this letter in a conspicuous place in this establishment for a period of sixty days.

Very truly yours,

GILFILLAN BROS. INC.

S. W. Gilfillan, President

SWG:IT

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Mr. Nourse: If the Examiner would like to save encumbering the record with this, we could stipulate that the witness has been shown an exact copy of the letter of November 11 as set forth in the stipulation in the record, either way.

Mr. Esterman: That is quite all right with me.

Mr. Nourse: That is the stipulation concerning the charge in Board's proceeding 1720, the stipulation we have, and the letter is set out in full there.

Trial Examiner Schneider: Very well. Proceed, Mr. Nourse.

Mr. Nourse: I have no further questions.

Trial Examiner Schneider: Mr. Lundberg, when did you become president of the E.M.A.

The Witness: In 1941, May, I think. [659]

Trial Examiner Schneider: May, 1941?

The Witness: Yes.

Trial Examiner Schneider: That is your best recollection?

(Testimony of Oswald Lundberg.)

The Witness: Yes.

Trial Examiner Schneider: Then you remained president until——

The Witness: Around April 1, 1942.

Trial Examiner Schneider: With respect to Board's Exhibit 9 I will admit all of the exhibit into evidence with the exception of the following portions:

On Page 2, the last paragraph, it is stated as follows quote, "An EMA committee was formed to write a contract and this was approved by the management and the E.M.A. in about May of that year," unquote.

And with the further exception of the second sentence following thereafter, quote, "I was elected president of the E.M.A. shortly after the 1941 contract was signed, and I remained as president until the end of March, 1943," unquote.

Off the record.

(A discussion was had off the record.)

Trial Examiner Schneider: On the record.

With those exceptions, Board's Exhibit 9 is admitted into evidence. [660]

(Thereupon, the document heretofore marked Board's Exhibit 9 for identification, was received in evidence.) [661]

(Testimony of Oswald Lundberg.)

BOARD'S EXHIBIT No. 9

Statement of Oswald Roy ("Red") Lundberg  
634 West 101st Street, Los Angeles, Calif.  
Phone: Twin Oaks 4862

I, Oswald Lundberg, after being duly sworn, voluntarily depose and say:

That I am 33 years of age, married and have one child, and I reside at the above address. I worked for Gilfillan Bros. Inc. at that company's 1815 Venice Blvd. Los Angeles plant on or about May 14, 1927, and I have worked at this plant continuously since except for two slack seasons; the first of these, I think, in 1933, when I worked for U. S. Motors for a couple of months and the second was in about 1934 when I worked for a restaurant supply house for about a month.

When I started working at Gilfillan's, I was a worker on the foot presser on ignition parts. In 1929 for about 8 months I supervised about six girls in the Gilfillan coil department, and after that I was an assembly employee working with the Breting Radio at this plant. The only other supervisory jobs which I have held began late in April of 1942 when I became milling machine foreman over the day crew. I supervised six steady men on the Cincinnati and Brown and Sharp and Kemp-smith Mills and usually two girls on the hand mills. (There were sometimes more than two and sometimes fewer than that; these girls were from the drill presses and the burr bench department.) I



(Testimony of Oswald Lundberg.)

did not have authority to fire on my own but I did have authority to recommend the discharge of employees and I could go to other departments to get specific individuals to work for a short period on the mills. All my time was taken up with supervising and setting up the 10 machines which there were altogether, and so, of course, I did not have any time for production work. My wages now are \$1.28 per hour and I believe that I received at least \$1 per hour all the time that I worked as milling machine foreman. (The E.M.A. contract with the company calls for leadmen to receive at least 15c an hour more than the next highest paid man in the department and I am sure that my wage rate was at least 15c higher than that of the next man under me.) Jim Clark worked the night shift as foreman over the mills during this period and Roy Johnson, the E.M.A. president, took care of the foreman's duties on another shift which ran for about 4 months in this period. My understanding is that he was not classified as a foreman; I am not positive of this, however. I was transferred to the turret lathe as an operator on about March 29, 1943, and Jim Clark took over my foreman's job on the mills at that time. Acceptance of this lathe job was made optional with me, and I took it for the experience. There was no reduction in wages. I am not supervising any other employees at present, however. Ray Tribe is my immediate foreman now on the lathe.

I joined the E.M.A. at the time that Miller and

(Testimony of Oswald Lundberg.)

Hill were officers of the organization—during 1937 or 1938. However, I was not active at that time. I was in the refrigeration department. The E.M.A. was active primarily among the radio employees. Ivar Thorstenson succeeded Miller as chairman of the organization. During the period that Thorstenson was chairman, I continued to pay dues as did some of the other employees. I did attend a few meetings of the organization during that period. The E.M.A. was relatively inactive at that time but was not completely dormant. The fire which took place at the plant on about the 30th of November 1940 knocked everything out and the E.M.A. along with it.

The E.M.A. revived in about March of 1941. I think that Al Zapf was vice president and acting as chairman during the initial period in this phase of the organization's development. [Note in margin]: The stricken parts are not in evidence. See Tr. p. 660. ~~An E.M.A. committee was formed to write a contract and this was approved by the management and the E.M.A. in about May of that year. Either the CIO or the AFL was distributing pamphlets at the plant at that time. I was elected president of the E. M. A. shortly after the 1941 contract was signed and I remained as president until the end of March 1942. I resigned at this latter date because I had seen an official notice which was posted on the bulletin board to the effect that no leadman or foreman would be allowed to~~

(Testimony of Oswald Lundberg.)

hold any office in the E.M.A. Up until the time I resigned I had been taking care of some of the milling machines but there were only three of them during this period and I resigned at the time that several new machines were added and I was given the foreman's classification. Since my resignation as president of the E.M.A. I have not served on any of the committees but I still belong to the organization and attend some of its meetings. Mr. Bucknell, the tool crib attendant on the night shift, collects dues for the E.M.A. in the machine shop on the night shift. However, he is through work at 6:00 a.m., which is the time my shift starts, and because it is convenient he gives me an envelope sealed with the dues money in it every few weeks and I give this to Otto Stegner, the vice president of the E.M.A., who puts the money into the E.M.A.'s treasury. This arrangement has been followed for about nine months.

While I have been foreman over the mills I have been very careful not to talk in favor of the E.M.A. or against the C.I.O. or the A.F.L. to any of the employees under my supervision and I have not on any such occasion urged any of the employees under my supervision to attend any of the E.M.A.'s meetings.

While I was president of the E.M.A. there was one source of income in addition to the 25c monthly dues. This was from the vending machines placed here and there in the plant. Shortly after I be-

(Testimony of Oswald Lundberg.)

came president we made an arrangement with the company whereby the salesman for the vending machine companies would turn these proceeds over to the company and either Leo Pflieger or I would pick up the receipts from the company and deposit this money in the E.M.A. treasury.

Leo Pflieger was elected treasurer of the E.M.A. at the same time that I was elected president of the organization. During that initial period of our office we did not have a bank account in the name of the E.M.A. Therefore, as a temporary expedient in order to save Leo the trouble of carrying his money (the E.M.A. money) back and forth, I understand that the money was left at the company's safe in the office of the plant. I think that this arrangement was made between Leo and Kemp.

I have seen various E.M.A. bulletins posted in the plant in January and February of 1943 and some of these are still up. One that I recall specifically, a 3-page bulletin headed "Employees Mutual Association Answers A.F.L.", was posted one day while I was not at work and I do not know who posted it. At any rate, the next day in the alleyway between the two buildings of the plant I saw this bulletin pasted up on the wall and two A.F.L. bulletins alongside it. These were removed immediately thereafter.

No company executive or foreman has talked with me about the reasons for the lay-offs in the burring department or the rework or drill press departments which have taken place recently. How-

(Testimony of Oswald Lundberg.)

ever, before the night shift was laid off in the drill press department (I understand that some of the men refused to work days and quit for this reason), I had observed that there was not sufficient work on the drill presses to keep the men busy. Since the night shift was discontinued in the drill presses I have noticed that one shift seems to do as much work now as the day and night shift did together before.

I have carefully read the above statement consisting of five typewritten pages and certify that the facts as related are true and correct to the best of my knowledge and belief.

.....

Oswald Roy Lundberg

-----  
Date signed

Q. (By Trial Examiner Schneider): Well, were there any men under Mr. Walters who were also called foreman? A. No, sir.

Q. There were not? A. No.

Q. While you were, as you testified, a leadman, did you have power to hire or fire employees?

A. No, sir.

Q. Did you have any power to recommend firing them? A. No, sir.

Q. Again I don't want to confuse you. But I call your attention to a statement in Board's Exhibit 9, on Page 1, which I show to you. I will read it. "I did not have authority to fire on my



(Testimony of Oswald Lundberg.)

own, but I did have authority to recommend the discharge of employees and I could go to other departments to get specific individuals to work for a short period on the mills."

Does that refresh your recollection?

A. Yes, it does. What I meant in this statement is that if my superior questioned me about any of the operators I would tell him just how they were performing their job, and that could be suggesting their—what would you say? Suggest their being fired or discharged.

Q. Did your superiors ever question you with respect to the [662] work of the operators on the machines at which you did set up?

A. Oh, yes, sir.

Q. They did? A. Yes, sir.

Q. Did they ask you how the men were progressing? A. That is right.

Q. And as to the caliber of their work, its quality? A. Yes, sir.

Q. Its quantity? A. Yes.

Q. Are you able to state whether or not, with respect to some of those operators, concerning whom you talked to your superiors, you made suggestions that they be discharged? A. No, sir.

Mr. Nourse: May I ask what he means by "no, sir," there?

Mr. Esterman: He says he can't state.

Mr. Nourse: I don't know whether that is what he means or not.

The Witness: That I ever referred to anyone being discharged, is that the question?



(Testimony of Oswald Lundberg.)

Q. (By Trial Examiner Schneider) Did you ever state to your superiors that a certain individual should be discharged? A. No, sir.

Q. Did you ever state to your superiors that you thought [663] a certain individual merited some disciplinary action or a reprimand or commendation? A. Yes, sir.

Trial Examiner Schneider: That question is very involved. Will you please read it over to the witness, so he understands it?

(The question was read.)

Q. (By Trial Examiner Schneider): With respect to disciplinary action, did you ever suggest that an operator should be disciplined?

A. Yes, sir.

Q. What was the result of that suggestion? Was he disciplined or was he not?

A. Yes, sir.

Q. He was. Can you state any specific cases?

A. Well, one I have in mind particular is a man that we had on the hand mills that was—I don't know his last name—his first name is Bill, and he had—he would come in once in awhile a little intoxicated, so I instructed my superior to instruct him. I talked to him before and he didn't pay any attention to me, so I had my superior talk to him. That is the only one I remember.

Q. Now, with respect to raises, did you ever recommend or suggest to your superiors that any of the operators should get raises? [664]

A. Yes, sir.

(Testimony of Oswald Lundberg.)

Q. You have done that? A. Yes, sir.

Q. And what was the result of those suggestions?

A. Well, some of them got raises and some of them didn't.

Q. Some were granted and some were not?

A. Yes.

Q. Did you consider that you had any authority over the operator with respect to the manner in which he should perform his work on the machines on which you did set up, while you were a leadman?

A. Yes, sir.

Q. You did. What did you consider to be the extent of that authority?

A. Well, to try and show him the proper way to run the machine, and to get the most production on the machine.

Q. Now, suppose after so instructing an operator he didn't carry out your instructions, what would you do?

A. Well, you would usually listen to his side of the story and probably he could tell you——

Mr. Nourse (Interrupting): I can't hear that.

The Witness: You would probably listen to his viewpoint on the running of the machine, and maybe he would have some pointers that would show you up. And otherwise, if your theory proved better and he didn't perform your [665] theory as you showed him, you would probably go to your superior and have him reprimand him.

Q. To have him what?

(Testimony of Oswald Lundberg.)

A. To have him talk to him or show him how it would be more efficient.

Q. Now, while you were a leadman, if something went wrong, say, a machine broke down, on your shift, and an operator then had no work to do, would you assign that operator to a different machine?

A. If he was one of the steady operators we would probably put him on a different machine. If someone was operating that we would send them back to their rightful department.

Q. Well, who decided, in the first place, whether, in the case where a machine was broken down, where an operator should go and what he should do?

A. That was up to me.

Q. That was up to you?                      A. Yes.

Trial Examiner Schneider: I have no further questions.

#### Redirect Examination

By Mr. Esterman:

Q. Did you know George Nelson?

A. Yes, sir.

Q. What did he do when he was with the company?

A. He was a leadman on the drill presses, and on the night shift. They come in at 4:30, I think it was 4:30. [666]

Q. And when you say "leadman," you mean he acted on the drill presses in about the same capacity that you did on the mills?                      A. That is right.

Q. Were you ever convinced by anybody work-

(Testimony of Oswald Lundberg.)

ing under your supervision that your instructions were wrong and that the job should be done some other way? I am asking you if it ever actually happened? A. What is that question?

Q. Has it ever happened, while you have been supervising the mills or leadman, that someone tried to do a job differently, different from any instructions you gave them, and convinced you that your instructions were wrong? A. Oh, sure.

Q. How many times has it happened?

A. Oh, it happens every once in awhile.

Q. Give me an example, specific example.

A. Well, that would be pretty hard to do. I wouldn't be able to give you an example, I don't think.

Q. You don't think what? [667]

A. Well, you said a specific—what was your—

Q. I meant an instance, a time when it happened. Do you have a time in mind when someone didn't follow your instructions and convinced you his way was better than yours? A. Yes.

Q. Do you have such a time in mind?

A. Yes.

Q. What happened?

A. I acknowledged his—

Q. What was he doing different from your instructions? That is what I am trying to find out.

A. Setting up the machine different.

Q. You had instructed him to set it up one way?

A. Yes, sir.

(Testimony of Oswald Lundberg.)

Q. And he was setting it up another, is that right?      A. That is right.

Q. By setting up you mean setting it up for working, processing the material?

A. That is right.

Q. And you came along and found he had set it up a different way. And then what happened?

A. It was running out more parts faster than the way I told him to set the machine.

Q. And so you let him do it his way because it was better?      A. That is right. [668]

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HARLEY R. BUCKNELL,

being duly sworn, called as a witness by and on behalf of the National Labor Relations Board, was examined and testified as follows:

Direct Examination

By Mr. Esterman:

Q. You are Mr. Harley R. Bucknell?

A. Yes.

Q. Where do you live?

A. I live on Miramont Boulevard, 5913.

Q. You are employed, are you not, by Gilfillan Bros.?

A. Yes.

Q. And you have been with the company since when?

A. Oh, nearly a year and a half. [671]

Q. That would be sometime during the fall of 1941, does that sound right?

A. Yes.

Q. Now, what work did you start at?



(Testimony of Harley R. Bucknell.)

A. I started in the burring department.

Q. And did you go to some other department from there?

A. No, I was just in the burring department; that was my work.

Q. You are now in the tool crib, are you not?

A. Yes, sir.

Q. All right. Did you come to the tool crib from the burring department? A. Yes.

Q. About when did that take place?

A. About December, a year ago.

Q. December of 1941? A. Yes.

Q. And that was on the night shift, was it not?

A. Night shift.

Q. And you are still on that shift?

A. I am still on that shift.

Q. Now, your job is what now?

A. Well, I got charge of the tools, tooling department for all the machines. That includes the automatics and turret lathes and drill presses, and everything. [672]

Q. That is, you have charge of the crib where the tools are kept and men call for them, do they, from time to time?

A. Well, yes, and I also assist the set-up men. Sometimes they get several jobs at one time and I help to set up the machines. [673]

Q. Now, there has been some testimony that dues collections have been made by you in the tool crib, and that dues have been paid to you on behalf of the E.M.A. That is, the E.M.A. dues at the tool crib. That is correct, isn't it?



(Testimony of Harley R. Bucknell.)

A. That is right.

Q. When did you start collecting dues for the E.M.A.?

A. I didn't keep any record of that. I just done it as an accommodation.

Q. Wait just a minute. We will get along better if you will just answer my questions. I mean, don't get ahead of me. When did you start collecting dues, if you remember?

A. I never try to remember. My interest is more in my work.

Q. How long have you been collecting E.M.A. dues?

A. Oh, maybe six months. I don't know. Maybe a year or [675] eight months, I wouldn't say exactly.

Q. It might be anywhere from six months to a year?

A. Yes.

Q. Did anyone ask you to collect dues or was it your own idea, or how did it come about?

A. I always tried to help out anyone.

Q. Did someone ask you to help them out?

A. If it helps the company, I certainly helped them.

Q. Did someone ask you to help them out on the collection of dues?

Mr. Nourse: Who asked you to do it?

The Witness: Why, first Red Lundberg, the man that was here a few minutes ago.

Q. Anyone else?

A. Yes, Otto Stegner. Of course, I don't get to see him. See, he comes—he works different, and

(Testimony of Harley R. Bucknell.)

he would leave a note to Buck—that is myself—to try and make the collections that night. Some nights I wouldn't get time that night, and I would wait until the next night, and I would make maybe a portion of collections when it was convenient when the men were—when I was in the proximity of the men.

Q. You said Mr. Lundberg, Red Lundberg, I think you called him? A. Yes.

Q. That was the man who preceded you on the witness stand? [676] A. Yes.

Q. And first asked you to collect dues?

A. Yes.

Q. For the E.M.A.? A. Yes.

Q. And now that you have talked about it, are you better able to tell us about when that was? I would like to have a better estimate than six months or a year.

Mr. Nourse: I think all the witness could be asked for is his best recollection.

The Witness: Yes. Mr. Ogran—I remember I made a statement, I don't want to get it mixed, I will say near to a year.

Q. You are not worried about something, are you, Mr. Bucknell? A. No.

Q. Just take it easy. Now, do you remember whether anything was said to you by Mr. Lundberg at that time when he asked you to collect dues?

A. It was just a small matter, I didn't try to remember.

Q. You don't remember what he said to you?

A. No.

(Testimony of Harley R. Bucknell.)

Q. You do recall that he asked you to do it, and that you were willing to help out, is that right?

A. That's right. [677]

Q. Is that right? A. That's correct.

Q. And that is why you did it? A. Yes.

Q. What did you understand Mr. Lundberg's job to be at that time?

A. Well, he was connected with the mills, I think he was a mill operator at that time.

Q. What did you understand then when he asked you to collect the dues, who did you think he was?

A. Well, now, I wasn't any official collector, I was an assistant, I might say, because I remember another man, Louie—well, in other words, I didn't make any full business of collecting, see, I just collected what I could. You might say promiscuously.

Trial Examiner Schneider: Off the record.

(Discussion was had off the record.)

Trial Examiner Schneider: Back on the record.

Mr. Esterman: I don't think we had an answer to the last question. I would like to find out if he can tell us.

Mr. Nourse: He said he was a mill operator.

Mr. Esterman: It isn't clear to me. It might be clear to you, counsel.

Mr. Nourse: I thought that is what the remark was, and then you asked him again the same question. [678]

Q. (By Mr. Esterman): At the time that Mr. Lundberg asked you to help out in the collection of dues, who did you think he was at that time?

(Testimony of Harley R. Bucknell.)

A. I thought he was just a friend, I guess.

Q. You did it because he was a friend of yours?

A. Yes.

Q. You had known him for some time?

A. Yes.

Trial Examiner Schneider: What did you think his capacity was in the plant?

The Witness: Of course he was in the mills, I knew he was a machinist in the mills is all. I don't know why you ask that.

Trial Examiner Schneider: That is immaterial why we might have asked it. I ask you, is that your best recollection that he was a machinist?

The Witness: Well, no; he is a mill operator.

Trial Examiner Schneider: Mill operator?

The Witness: Yes. That might be a foreman or any man, that is, that was in the mills, he could be either foreman or mill operator.

Mr. Nourse: I can't hear what the witness is saying. Will you read that answer, please?

The Witness: I said leadman, he could be either one, an operator; and sometimes they operate the machines. [679]

Mr. Nourse: Let it go.

Trial Examiner Schneider: Proceed, Mr. Esterman.

Mr. Esterman: I didn't hear some of those exchanges, Mr. Examiner, and maybe I am asking him something that he has already answered.

Trial Examiner Schneider: Mr. Reporter, will

(Testimony of Harley R. Bucknell.)

you read over the last two questions and answers, if we have any.

(The record was read by the Reporter.)

Q. (By Mr. Esterman): You didn't know at that time whether he was an operator or a leadman, or a foreman, is that your statement?

A. Of course I didn't look up everyone's category in the mills; I knew he was in the E. M. A. and I don't remember who was the main man in the mills at that time. I knew he was first an operator, and he must have been an operator at that time.

Trial Examiner Schneider: Mr. Witness, these long involved answers are really unnecessary.

The Witness: I see.

Trial Examiner Schneider: If a direct question is asked you calling for a yes or no, try to answer it yes or no, and if you have an explanation to offer, then give it. Try to answer the question directly first. Try to make your answers as brief as possible, and don't be nervous.

The Witness: All right. [680]

Q. (By Mr. Esterman): Just tell me whether you knew at that time, Mr. Bucknell, if he had charge of any men on the milling machines; what at that time you knew? And all you have to say is yes or no.

Mr. Nourse: You mean at the time——

Mr. Esterman: I am talking about the time that Mr. Lundberg asked him to help out with the dues.

The Witness: I don't remember whether he was

(Testimony of Harley R. Bucknell.)

just an operator or whether he was the main man in the mills.

Q. (By Mr. Esterman): You know Margaret Goebel, don't you?      A. Yes.

Q. There is testimony that until recently she was connected with the burring department on the 2:30 to 11:00 o'clock shift?      A. Yes.

Q. Is that your recollection also?

A. I suppose that is what time she went on. We come on at six.

Q. Did she ever collect any E.M.A. dues? That is, did you ever see her collect any E.M.A. dues?

A. No.

Q. Did she ever refer girls to you for the purpose of paying dues or joining the E.M.A.?

A. I asked her for the names of the girls; I wished to contact these girls, so I asked her for the names. [681]

Q. By the way, who was Mrs. Goebels, what was her capacity?

A. I wasn't down in that department, I don't know—she took care of it, I suppose, was in charge of it.

Mr. Nourse: I didn't hear that.

Mr. Esterman: I didn't hear it either.

(The last answer was read by the Reporter.)

Trial Examiner Schneider: The acoustics are bad in this room.

Q. (By Mr. Esterman): Don't you know whether she was in charge of it or not?

A. Yes.



(Testimony of Harley R. Bucknell.)

Q. Well, which is it?

A. I might just as well say yes on that.

Q. You are not trying to keep anything back, are you?      A. No.

Q. All right. Now, tell us what you think she was.

Mr. Nourse: I think he is trying to be too certain.

Mr. Esterman: I am not sure of that.

The Witness: It never occurred to me at that time to find out.

Q. (By Mr. Esterman): What did you think her connection was with the burring department? You must have had some idea.

A. Well, I know——

Mr. Nourse: What is the use of all this? There is no doubt about it that during all the time that Miss Goebel was [682] there on that shift she was the leadwoman.

The Witness: She was in charge.

Mr. Nourse: Call her whatever you want.

Mr. Esterman: Suppose we have him answer. Did you hear the answer?

Trial Examiner Schneider: He said she was in charge.

The Witness: Yes. Put down yes, she was in charge of it.

Q. (By Mr. Esterman): When you collected dues, I take it you kept track of the names of the people that paid you the money, isn't that right, you put their names down?      A. Yes.

(Testimony of Harley R. Bucknell.)

Q. And you would receipt their membership card for the 25 cents? A. Yes.

Q. And you would make a list and then you turned the money over to Mr. Lundberg?

A. Yes.

Q. Generally? A. Yes.

Q. And that would be when he came on shift at six in the morning? A. Yes.

Q. And you were leaving? A. Yes.

Q. And you would get his receipt, wouldn't you, for the [683] money?

A. Yes; but sometimes it took me many days—that is, maybe three or four days to make the collection, because I didn't waste any time collecting.

Q. That is, you didn't give him money every day, but you would gather it up and give it to him——

A. I kept it locked up in my tool box until it was convenient to give it to him.

Mr. Esterman: I will ask the Reporter to identify as Board's Exhibit next in order this paper, being a list of E.M.A. collections for January 1, '43.

The Witness: None of those are complete, you understand.

Mr. Esterman: I haven't asked you anything yet.

(Thereupon, the document referred to was marked as Board's Exhibit No. 10, for identification.)

Mr. Nourse: Have you a bunch of them?

Mr. Esterman: They are here if you want to see

(Testimony of Harley R. Bucknell.)

them. I don't intend to offer a bunch. You can see the others if you think they are pertinent. I don't want to hold anything back.

Mr. Nourse: Who prepared them?

Mr. Esterman: I will establish that. [684]

Mr. Nourse: I would like to see the rest of them.

Mr. Esterman: I will be happy to show them to you.

Q. (By Mr. Esterman): I show you Board's Exhibit 10 for identification, and ask you if these are your initials in ink "H.R.B."?

A. Yes, I gave that to Mr. Ogran.

Q. And this is one of a number of similar sheets of paper which you turned over to Mr. Ogran at his request?

A. I am a very poor bookkeeper.

Q. Your answer is yes, you did?

A. Yes.

Q. And this signature, these words "Received 2-9-43 O. Lundberg" are in the handwriting of Mr. Lundberg, are they not? A. Yes.

Q. And that was written in your presence?

A. Yes.

Q. And is the rest of it your handwriting? Please look at it.

A. Yes, it is. Yes, that's mine.

Q. Everything else but what I mentioned is your handwriting? A. Yes.

Q. And this is the amount, \$2.00, that you turned over to Mr. Lundberg, collections for the month of January, 1943? [685]

(Testimony of Harley R. Bucknell.)

A. Yes; but that is incomplete. There might have been some others. See, these are not, you understand I didn't expect these would ever be scrutinized for bookkeeping.

Q. We are not criticising your handwriting or bookkeeping; I am just asking you if everything but this date 2-9-43 and Lundberg—of course these initials are in your handwriting? A. Yes.

Q. Everything but the date and "O. Lundberg" are in your handwriting, is that right?

A. Yes. [686]

Trial Examiner Schneider: There is not sufficient foundation for Board's Exhibit 11.

Mr. Nourse: I will show it to Mr. Sparks, if he says that is the one that was there, or Mr. Johnson.

I will change my stipulation. I will stipulate that this is the transcript, that is a copy made in shorthand from the one that was on the bulletin board which had been shellacked onto the bulletin board, and I believe it to be a true copy of what was shellacked on there and it couldn't be taken down at that time without scraping the board, and it was copied off by one of the girls and furnished to the Board here, Mr. Ogran, the Field Examiner for the Board, and this is the transcript of the stenographer's notes who went out and took her notes by reading from the board and made it that way.

Trial Examiner Schneider: This is a copy of the document which was forwarded by Mr. Gilfillan to Mr. Ogran?

(Testimony of Harley R. Bucknell.)

Mr. Nourse: This is the document.

Trial Examiner Schneider: It may be admitted.

Mr. Nourse: I object to its materiality at this time unless some foundation is laid, unless counsel says what he intends to prove. If he intends to prove that this [689] was posted by the company, or that the company had any connection with the posting, of course it would be very material. Otherwise, I can't see its materiality.

Mr. Esterman: That is what I hope to prove.

Trial Examiner Schneider: Am I corect in that I understood you to say that you would connect it up?

Mr. Esterman: That is my intention.

Trial Examiner Schneider: It is admitted subject to being connected.

Mr. Nourse: All right.

(Thereupon, the documents referred to were received in evidence as Board's Exhibits 10 and 11.)

#### BOARD'S EXHIBIT No. 10

E.M.A. Collection 1-1-43

62	Rex Darrah Janes .....	.50
	Jesse Mache .....	.50
	Betty Fream .....	.25
311	Margaret Goebel .....	.25
	Burring Foreman	

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2.00

Rec. 2-9-43

O. Lundberg

[Initialed]: H R B

(Testimony of Harley R. Bucknell.)

Mr. Esterman: I have no further questions of this witness.

Cross Examination

Q. (By Mr. Nourse): You are the tool department at night, are you not? You said you were in charge of the tool department. You are it, aren't you?

A. I don't quite understand.

Q. Well, there is nobody else there, is there?

A. No.

Mr. Esterman: We don't contend that he is a supervisor.

Mr. Nourse: All right. [690]

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ROY JOHNSON

a witness called by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Esterman): You are Mr. Roy Johnson?

A. That's right.

Q. And your address?

A. 1421 West 55th Street.

Q. And employed by Gilfillan Bros.?

A. I am.

Q. You are the Mr. Roy Johnson who is president of the E.M.A.?

A. I am. [696]

Q. You work on what shift?

A. I work on the day shift now.



(Testimony of Roy Johnson.)

Q. That is from 6:00 a.m. to 6:00 p.m.?

A. No. I work from 8:00 o'clock to 5:30.

Q. And has there been a recent change? How long have you been on the day shift? Put it that way.

A. A couple of months.

Q. And before that what shift were you on?

A. The swing shift.

Q. Is that the shift that alternates between days and nights?

A. That's right.

Q. Can you place the date that you left the swing shift for the day shift?

A. Around the last of January. Wait a minute. No. I can't place the day. I made that statement about two months ago, approximately.

Q. I don't know what you mean by "I made that statement." I want to know when you changed over, if you can fix the date. If your best recollection is a couple of months ago, I will accept that.

A. Approximately a couple of months ago.

[704]

Q. Sometime in May that you came off the swing shift, would that be about right?

A. I could find out for you the exact day that I changed over, if you wish.

Q. All right. You find that out for me.

Mr. Esterman: Can you tell us that, Mr. Sparks, from your records?

Mr. Nourse: We can find it out. We don't keep the records here, either the payroll or the cash.

Mr. Esterman: I thought he had personal knowledge, perhaps.

(Testimony of Roy Johnson.)

Q. (By Mr. Esterman): You were elected president of the E.M.A. in June of 1942, were you not, at a meeting of the E.M.A.?

A. About then, yes. [705]

Q. Now, I will ask you, first, without reference to these minutes, whether you recall a meeting that was held in January, a meeting of the E.M.A. held in January for the purpose of electing a grievance committee? There has been some testimony about that. Do you recall such a meeting?

A. I recall such a meeting. I don't know whether it was in January or not; I don't know.

Q. When could it have been, if it wasn't in January? A. December or February.

Q. It might have been in December, January or February? A. That is right.

Q. Now, does your recollection serve you as to whether Mr. Jim Clark was nominated to the grievance committee? A. He was.

Q. And he acted on the grievance committee, is that right? A. No, sir.

Q. I beg your pardon? A. No.

Q. What did he do, resign?

A. Well, he was—are you asking for an explanation?

Q. No. I will withdraw that question. I will ask you if [707] he accepted the nomination.

A. Yes, he did.

Q. All right. I will ask you if your recollection serves you as to whether a man named Foley attended that meeting?

(Testimony of Roy Johnson.)

A. Off memory I wouldn't know.

Q. Look at your copy of the minutes.

A. I see the name Foley there.

Q. And tell me whether that helps you remember.

Mr. Nourse: Mr. Johnson, keep your voice up. You are talking right into your lap.

The Witness: It doesn't help me to refresh my memory.

Q. (By Mr. Esterman): Is there any question in your mind about whether Mr. Foley was there or not.

A. I don't think there is any question in my mind. I am pretty sure he was there. The record shows he was.

Q. That is what I want to know.

A. But I don't remember him being there.

Q. You have also brought with you, have you not, the cancelled checks and statements of the E.M.A.?

A. I did.

Q. Now, I want you to look at these checks that I have taken from the bank statements, and tell me if it isn't a fact, by referring to them, because I don't want to put these in evidence unless someone insists upon it, if it isn't a fact that on October 7th, a check for \$100.00 was drawn by [708] the E.M.A. to Mr. Rupert J. Foley for an E.M.A. loan?

A. That is right.

Q. I will also ask you if it isn't a fact that on December 14, 1942, a check for \$7.00 was drawn to the Adohr Milk Farms?

(Testimony of Roy Johnson.)

Mr. Nourse: What date is that?

Mr. Esterman: December 14, 1942.

Q. (By Mr. Esterman): And on January 20, 1943, a check for \$8.60, drawn to the same payee, Adohr Milk Farms, both drawn for the purpose of, as indicated on the check, for milk shortage or milk fund shortage? A. Yes.

Q. Now, will you explain what those payments were?

Trial Examiner Schneider: May I interrupt? What was the amount of the December 14th check?

Mr. Esterman: \$7.00.

The Witness: Well, in supplying milk to the people on the night shift, some of the people get off and eat lunch at 10:30, there is no milk company that comes around and sells milk, so the Employees Mutual Association took it upon themselves to have a milk box. We sold the milk out to the people at retail and bought it at retail; consequently there is bound to be a certain amount of shortage, which we made up from the Employees Mutual Association fund.

Q. Is this a fair statement, then, that arrangements were made to retail milk in the plant, and that this arrangement [709] was sponsored by or originated or started by the E.M.A., and the milk was sold to anyone who would pay for it in the plant, and it was sold at cost, and there were some losses, consequently, which the E.M.A. made up?

A. That is right.

Q. Is that a fair statement?

(Testimony of Roy Johnson.)

A. That is right. [710]

Q. I will ask you to look at these five checks with me and ask you if it isn't a fact that the following checks were drawn all payable to Roy Johnson, yourself, in the following dates and amounts:

November 27, '42, \$9.18? A. That's right.

Q. December 31, '42, \$12.00.

Mr. Nourse: December 31?

Mr. Esterman: 31, 1942, \$12.00.

The Witness: Right.

Q. (By Mr. Esterman): March 6, 1943, \$12.60?

A. That's right.

Q. April 2, 1943, \$20.32? A. That's right.

Q. May 5, 1943, \$21.87? A. That's right.

Q. That the checks of November 27, March 6, April 2, and May 5 bear the explanation in the upper left-hand corner "For time lost"?

Mr. Esterman: I will change that and withdraw it.

Q. (By Mr. Esterman): That the check dated November 27 bears the legend in the upper left-hand corner "Time lost for E.M.A."; that is correct, is it not? A. That's right.

Q. No explanation on the check of December 31, is there, on its face or on the back? [711]

A. No, there isn't.

Q. That the check of March 6 bears the legend, "For time lost"? A. That's right.

Q. That the check of April 2 bears the legend, "For time lost"? A. That's right.



(Testimony of Roy Johnson.)

Q. That the check of May also says that it is for time lost?      A. That's right.

Q. Looking at the check dated December 31, 1942 do you know for what purpose that was issued?

A. I do.

Q. Will you state it, please?

Trial Examiner Schneider: Was that dated December 31?

Mr. Esterman: Yes.

The Witness: We not only furnished coffee—or milk, but we furnished coffee on the night shifts, and all of them, and I got a ration card for coffee and didn't have enough money to purchase the coffee, it called for 90 lbs., so I borrowed \$12.00 and paid back the \$12.00 to the E.M.A.

Q. In other words, this is an expenditure you made out of your own funds and reimbursed yourself for, is that right?      A. That's right. No.

Mr. Nourse: No; you put it backwards. [712]

The Witness: No. I paid it back to the E.M.A. after I received the money for the coffee.

Q. (By Mr. Esterman): Well, the effect is the same.

A. No, it isn't. I don't buy the coffee, nor does the E.M.A. buy the coffee. I just was short \$12.00 to buy the coffee which cost thirty-six dollars and some cents or \$38.00, and I borrowed the additional money from the E.M.A. and paid it back.

Q. Under whose auspices was coffee furnished?

A. Nobody's; different shifts paid for their own coffee.



(Testimony of Roy Johnson.)

Q. Now, for time lost in the case of the checks made out to you means for time lost on E.M.A. business, does it not?

A. For time lost from my work that I lost actual time from my work and the E.M.A. reimburses for the amount of money I would ordinarily have earned.

Q. If I haven't stated it right I want you to state it.           A. That's right.

Q. There was also issued on May 5, 1943 a check in the amount of \$5.05 to Mr. O. Lundberg for time lost, was there not?           A. That's right.

Trial Examiner Schneider: What was the date of that?

Mr. Esterman: May 5, 1943.

Q. (By Mr. Esterman): And on May 5, 1943 a check was issued [713] to—what is that name?

A. Al Bluel.

Q. B-l-u-e-l?           A. B-l-e-u-e-l.

Q. And that also was for time lost on E.M.A. business?           A. That's right.

Q. Now, at Mr. Ogran's request—and I am not having this identified, counsel, because I don't intend to offer it; I am addressing Mr. Wilson—you brought Mr. Ogran of this office a list of E.M.A. members? I should say this list of E.M.A. members, did you not?           A. Yes.

Q. And except for the check marks in pencil, in black or red pencil, that is the list that you brought in?           A. I am sure it is.

Q. And it bears the heading E.M.A. members

(Testimony of Roy Johnson.)

294; I take it that is the numerical total, the number of members, isn't it?      A. Yes, sir.

Q. And under that in parenthesis "These people have paid dues for the month of March, 1943, to the Employees' Mutual Association," is that correct?      A. That's correct.

Q. Now this list, and I would like you to look at it, includes the name of James Clark, does it not? [714]      A. It does.

Mr. Nourse: If the Examiner please, it seems to me that I offered the stipulation yesterday that leadmen were permitted by and with the knowledge of Gilfillan Bros. to be members of the E.M.A. Now, if that is what you are trying to prove I will stipulate anyone you want to name that you say is from the list, I will stipulate were.

Mr. Esterman: I appreciate that, except that from my point of view it is a disorderly way of getting it into the record.

Mr. Nourse: All right. Then I withdraw the stipulation that was offered.

Mr. Esterman: Thank you very much.

Q. (By Mr. Esterman): This list bears the name Margaret Goekel, G-o-e-k-e-l; I take it that is intended to mean Margaret Goebel, is it not?

A. I don't know. I didn't compile it.

Q. Is there anyone named Goekel, G-o-e-k-e-l-, with the company?

A. Not to my knowledge.

Trial Examiner Schneider: Off the record.

(A discussion was had off the record.) [715]

(Testimony of Roy Johnson.)

Trial Examiner Schneider: On the record.

Mr. Esterman: Mr. Nourse, will you stipulate that Andy Schumer was a member of and paid dues to the E.M.A. in March, 1943?

Mr. Nourse: Yes.

Mr. Wilson: I so stipulate.

Mr. Esterman: Will you also stipulate——

Mr. Nourse (Interrupting): Now, read them all in at once and let's have just one stipulation, starting after Schumer.

Mr. Esterman: ——that Mr. A. J. Tenraa was a member of and paid dues to the E.M.A. in March, 1943?

Mr. Nourse: Yes.

Trial Examiner Schneider: Who is he?

Mr. Nourse: I don't know if he is on that list.

Mr. Esterman: I can show that pretty quickly. Mr. Sparks can tell us, or I will have it offered from the witness stand.

Mr. Nourse: He is leadman in the cable department.

Q. (By Mr. Esterman): Now, when did you start to work for the Gilfillan Company, Mr. Johnson?

A. I think it was in 1933 or '34.

Q. Will you tell us what positions or jobs you have held since that time, and try to relate the jobs to the approximate time when you held them. What work you did, and when you did [716] it.

A. I was a truck driver for approximately seven and a half years.

(Testimony of Roy Johnson.)

Q. That would be until about when, Mr. Johnson?

A. Until October or November of 1942.

Q. All right. Then what was your job?

A. In the burr department, in the machine shop.

Q. What work did you do? A. Burring.

Q. And how long did you do that?

A. About a week and a half.

Q. Then what?

A. I went on the drill press.

Q. For how long?

A. Approximately two and a half months, about two, two and *and* half months.

Q. Then where did you go?

A. On the milling machines.

Q. Do you recall when that was?

A. It was just after the first of the year.

Q. That is 1943? A. '42.

Q. 1942, I beg your pardon.

A. Did I say '42 when I went in the machine shop?

Q. I think you did. [717]

Mr. Nourse: Yes.

The Witness: '41.

Q. (By Mr. Esterman): 1941?

A. Correct.

Q. That is when you stopped driving a truck, in 1941? A. Yes.

Q. So you went on the milling machines then finally when?

(Testimony of Roy Johnson.)

A. Just after the first of the year in 1942.

Q. How long did you stay on the milling machines?

A. About a year and one or two months.

Q. That would take you up to your present job?

A. No.

Q. Then what?

A. Then I went on the turret lathes.

Q. When was that?

A. You want the date when I went on, or approximately?

Q. Approximately. Give us your best recollection.

A. Around February.

Q. February, 1943?

A. '43.

Q. Was it the middle of the month or the end of the month, or when?

A. I don't recall.

Q. Now, when you went on the milling machines, what were your duties? [718]

A. Operated a mill.

Q. And were you given charge of any other operators during the time you were on that operation, that is, milling machines?

A. Well, there were some inexperienced people that came in there, that they would bring over from the burr department, something like that; as I was the oldest man on the shift, I would show them how to do it.

Q. Were you ever instructed to take charge of any of the people there, in any sense?

A. No, I never was.

(Testimony of Roy Johnson.)

Q. You never had supervision over any of the people that worked on the mills?

A. Just those that didn't know anything about it.

Q. What did you do for them?

A. Well, if it was a simple set-up, I would make the set-up and show them how to operate, and run three or four or five pieces.

Q. What other kind of set-ups are there besides simple?

A. The kind you get in trouble with.

Q. All right. Who would set those up?

A. On the shift?

Q. Yes.

A. Well, Mr. Hoenes would work with me, and we would set it up. [719]

Q. Now, during the time you were on the milling machines, were you ever designated as a lead-man? A. No, sir.

Q. Were you ever put in charge of any of the persons working on milling machines during that time, by the management? A. No, sir.

Q. Not even temporarily?

A. Well, the inexperienced people, as I explained, that needed help, I helped them.

Mr. Nourse: That has been asked and answered, and gone all through.

Mr. Esterman: All right.

Q. (By Mr. Esterman): Just to refresh your recollection, Mr. Johnson, you discussed this matter with me before, have you not? That is, this case, before you took the witness stand?



(Testimony of Roy Johnson.)

A. Yes, I have.

Q. And you have also discussed it with Mr. Ogran of this office?      A. That is right.

Q. Now, do you recall any discussions with him on the subject of the period between October, 1942, and on or about February 15, 1943, as to what your work was during that time?

A. I don't recall the discussion, no.

Q. Well, just to refresh your recollection, did you tell [720] him that you served in any capacity as temporary leadman with supervision over about seven to ten men?

A. Yes, I remember something about it.

Q. Tell us what you told him.

A. I don't remember what the exact words were I told him.

Q. Is that, in substance, what you told him? And I will repeat. That during that period from October, 1942, to about February 15, 1943, you worked as a temporary leadman, with supervision over about seven to ten men on the mill. Is that, in substance, what you told him?

A. It is pretty hard to remember—I don't remember anything about telling him that. He might have inferred it from the statement I made.

Q. If I show you some notes you made at the time, perhaps that will refresh your recollection. I will show you a memorandum, or rather a form headed, "Affidavit", whereon there are some notes, which, I take, are in your handwriting because they bear your initials. Now, will you look at that, please,

(Testimony of Roy Johnson.)

and tell me whether that refreshes your recollection as to what you said. [721]

Q. (By Mr. Esterman): After refreshing your recollection from these notes can you state now whether you didn't tell Mr. Ogran, in substance, that you worked as a temporary leadman with supervision over about seven to ten men on the mill; that during that time you set up, inspected, adjusted machines and supervised the workers with respect to correct workmanship, you did not run a machine yourself. Now, is that, in substance, what you told him?

A. That is about what I told him.

Q. And that is about right, isn't it?

A. That's about right.

Q. I mean that is the fact, isn't it?

A. Yes.

Q. You heard the testimony about the posting of Board's Exhibit 2, headed, "Employees Mutual Association Answers A. F. of L.," to the effect that you—Mr. Hines testified that you and Mr. Nevins—do I have that right?

A. That's right.

Q. Had shellacked that on the wall. You heard that testimony, did you not?

A. I did not.

Q. You didn't hear Mr. Hines testify?

A. No.

Q. Well, now—— [723]

A. I heard Mr. Nelson testify to that.

Mr. Esterman: I think I am mistaken. It was Mr. Nelson who said that. I beg your pardon.

Q. (By Mr. Easterman): It was Mr. Nelson who stated that, was it not?

(Testimony of Roy Johnson.)

A. Yes, I think it was.

Q. Now, you were one of the two men who posted this Board's Exhibit 2; that is shel-  
laced it on the wall? A. Yes, I did.

Q. Do you recall who the other man was?

A. Yes. Mr. Pfleger.

Q. That is the man who testified here before?

A. Yes, it was.

Q. I show you Board's Exhibit 11, for identification, because I don't think it has been received, and ask you to look at it, please, and tell me if you have seen it or anything like it before.

Mr. Esterman: That is in evidence subject to being connected?

Mr. Wilson: Yes.

The Witness: In reading part of it I have seen it before, yes.

Q. (By Mr. Esterman): Where did you see it?

A. On the billboard at Gilfillan's.

Q. Have you seen more than one copy of it?

[724]

A. No; just one copy.

Q. On what board?

A. The board close to the timeclock. It would be in the east building.

Q. Was this also shellacked up on the board or the wall, if you know? A. I think it was.

Q. Excuse me?

A. It was on the bulletin board; I think it was shellacked, yes.

(Testimony of Roy Johnson.)

Q. Do you know who posted it?

A. I do not.

Q. Do you know when you saw it?

A. I don't remember the date, but I seen it.

[725]

Q. Well, there has been some testimony that the A.F. of L. started organizational work around the plant sometime in January. Now, with reference to the A.F. of L. activities, was it before they started or sometime after?

A. After

Q. Would it be sometime in January or February, then, that you saw this?

A. Yes, sometime in January or February.

Q. 1943. Did you make any effort to ascertain who posted Board's Exhibit No. 11?

A. No, I didn't.

Q. (By Mr. Easterman): Now, Mr. Johnson, sometime in January, 1943, there was a change in the company wage structure, was there?

A. Yes.

Q. There were some increases given to a number of people in the plant? [726]

A. Yes.

Q. And a number of women were increased 20 cents an hour, were they not? If you know.

A. No, I don't know, but I presume some of them could have been increased that much, yes.

Q. You knew there was an increase that was, to some extent, general throughout the plant, did you not?

A. Yes.

Q. What is your knowledge as to the basis for

(Testimony of Roy Johnson.)

that increase, as to what brought it about? If you know. Do you know how it came about?

A. Yes.

Q. Will you tell us?

A. Raise the people in wages.

Q. I didn't hear you.

A. To raise the people in wages to the extent of what the other places in Los Angeles were getting.

Q. That is, the scale was raised generally. I want you to tell me if this is your understanding: That the wage scales were raised generally to meet wage rates prevailing in other plants, is that a correct statement of your understanding?

A. Yes.

Q. Now, did the E.M.A. have anything to do with negotiating this change at that time?

A. Outside of verbally asking them, or telling them that [727] the wage scale in those departments and the starting wages of women were lower than they were in other places, we had nothing else to do with it.

Q. Only to the extent, then, that different members of the E.M.A. discussed the matter with the management, is that what you mean? What I am getting at is this: I don't want to get this too involved. What I am getting at is did the E.M.A. or anyone in an official capacity, on behalf of the E.M.A., have anything to do with this increase? Does that make it any clearer?

A. Yes.

Q. What is your response to that?

(Testimony of Roy Johnson.)

A. Outside of verbally asking the company to increase the wages, we had nothing to do with it. We didn't have a grievance committee meeting to go in with the company and try to iron it out.

Q. Will you illustrate what you mean by verbally, as to how you did it?

Mr. Nourse: Tell who did it, is that what you want?

The Witness: I went to Mr. Sparks and asked him to explain how the wages in Gilfillan Bros. were less than other plants, especially for starting wage for women, which were 50 cents for women and 60 cents for men; and shortly afterward wages were adjusted.

Q. (By Mr. Esterman): And except for that there was no [728] official action by the E.M.A.?

A. That is right. [729]

Trial Examiner Schneider: The hearing will be in order.

Mr. Nourse, I understand, from the discussion which we had during the recess, that you have not abandoned your motion to dismiss on the grounds the Board has no jurisdiction to proceed.

Mr. Nourse: That is correct. And I thought I made that clear in the record, and if I did not, I am still standing upon the motion as stated in the record. The only thing I withdrew or intended to withdraw was my request that you proceed to take evidence on that, certify your findings and that the Board determine that before further proceedings.



(Testimony of Roy Johnson.)

Trial Examiner Schneider: That is very clear, Mr. Nourse. Thank you.

The motion to dismiss will be denied.

Mr. Nourse: Without prejudice, I presume.

Trial Examiner Schneider: Surely. You save all of your rights.

Mr. Nourse: I mean without prejudice to the renewal of the motion during this proceeding.

Trial Examiner Schneider: That is correct.

[732]

Q. (By Mr. Esterman): Mr. Johnson, I show you Board's Exhibit 12, for identification, which I am advised by Mr. Nourse is an exact proof-read copy of the original agreement, which I will show you, and ask you to tell me what that is.

A. This is the contract between the Employees Mutual Association and Gilfillan Bros. [733]

Q. (By Mr. Esterman): Do you know when this contract was signed; and if the persons who signed it signed it at different times, that is, on different occasions, I would like to have you so indicate, and I am showing you the signature page?

A. They were all signed on the same day.

Q. They all signed at one time? A. Yes.

Q. Do you know when that was?

A. Not the exact date, no.

Q. Would this help: According to the contract the effective date—I am looking at Article 3, the language is as follows: "This agreement shall become effective as of May 1, 1943," and so on. Does

(Testimony of Roy Johnson.)

that help you recall when it was signed with reference to that date?

A. I know approximately when it was signed.

Q. Give us the best you know.

A. Between the 5th and the 10th of May. [734]

Cross Examination

Q. (By Mr. Nourse): Mr. Johnson, calling your attention to Board's Exhibit 12, and to Exhibit A annexed thereto, when were the terms of Exhibit A agreed upon? Were the terms of Exhibit A agreed upon?

A. Yes, it was taken up at a meeting in the Hall; it was voted on at that meeting by everybody there.

Q. When did you first start to discuss with the management the terms and conditions that are now set forth in Exhibit A?

Trial Examiner Schneider: Exhibit 12.

Mr. Nourse: Exhibit A to Board's Exhibit 12.

Trial Examiner Schneider: I beg your pardon.

The Witness: Sometime in April.

Mr. Esterman: 1943?

The Witness: '43.

Q. (By Mr. Nourse): And when was your work completed upon that portion of the agreement, which is Exhibit 12?

A. About the—between the 5th and 10th of May.

Q. On this sale of milk at retail, and during the period for which counsel has examined you,

(Testimony of Roy Johnson.)

I think which ended around May 5th, where was the box maintained?

A. It was in the tool crib. [738]

Q. Was it always in the tool crib?

A. No; when they first put it in, for a few days, it wasn't, no.

Q. Where was it then?

A. It was in the aisleway by the vat, close to the cable department.

Q. Now, when a man went to buy anything from that box, how did he go about it?

A. He took his bottle of milk out, and he was supposed to drop a dime in.

Q. How is that?

A. He took his bottle of milk by himself, and he was supposed to drop his dime in the box.

Q. And these shortages you made up, to the milk company, were on account of the fellows that didn't drop their dimes? Is that right?

A. That is right.

Q. And anybody, in the plant, whether he was A.F.L. or C.I.O. or no union or E.M.A., could go in and take a bottle of milk, and drop a dime?

A. That is right.

Q. And some of them, you didn't know who, forgot to drop the dimes?

A. Yes, that is right.

Q. And was there any sign on the box that said, "E.M.A. [739] Milk Fund," or anything of that kind? A. No, there wasn't.

Q. There was just milk in there for everybody and a kitty to take the dimes in?

(Testimony of Roy Johnson.)

A. That is right.

Q. The only connection the E.M.A. had with it was to bear the loss, if any?

A. That is right; we bore the loss, which was plenty. [740]

Q. (By Mr. Nourse): Mr. Johnson, you described, in your examination by counsel for the Board this morning, the work that you actually did after you went off as operator on the mills and did some supervisory work. A. Yes.

Q. Do you remember that? A. Yes, I do.

Q. Is that the work you were doing during the period that you referred to in the statement as supervisory work? A. Yes. [741]

Q. (By Mr. Nourse): I want you to look through these handbills which constitute Respondent's Exhibit 3-A to -H, for identification, and point out such of those as you can—point out, first, such of those as you can that you saw posted on the bulletin boards, or the walls within the plant, or the oven, or anywhere, whatever you can. When you come to the first one, call my attention to it.

A. The wording in this green one looks very familiar.

Trial Examiner Schneider: I didn't hear the answer.

(The last answer was read by the reporter.)

Q. (By Mr. Nourse): To the best of your recollection is that one of them that you saw posted? A. That's right.

(Testimony of Roy Johnson.)

Mr. Nourse: I now offer Exhibit 3-A of this exhibit in evidence.

Mr. Esterman: I am going to object to that because I don't hear any more foundation now than I heard before. If counsel will find out from the witness where and when, I think it would be helpful.

Mr. Nourse: All right. I will withdraw the offer.

Q. (By Mr. Nourse): Between what dates did you see this posted?

A. Sometime in January or February, somewhere around there, there were several bulletins, and which preceded one or the other I don't know.

[743]

Q. Do you mean several handbills?

A. Several of this type.

Q. Where did you see it?

A. On the bulletin board in the machine shop.

Q. Is that the same bulletin board you saw the "Me" letter on, *with* is Board's Exhibit 11?

A. No, it isn't.

Q. Where was the "Me" letter?

A. That was by the timeclock in the main building.

Mr. Nourse: I now offer this in evidence.

Trial Examiner Schneider: Any objection?

Mr. Esterman: I will make a record objection that no proper foundation has been laid, and it has no relation to the issues in this case.

Trial Examiner Schneider: It is your testi-



(Testimony of Roy Johnson.)

mony that you saw this exhibit, Respondent's Exhibit 3-A posted on the bulletin board of the machine shop at the plant of Gilfillan Bros.

The Witness: Yes.

Trial Examiner Schneider: It may be admitted.

(Thereupon, the document heretofore marked Respondent's Exhibit 3-A for identification, was received in evidence.)

### RESPONDENT'S EXHIBIT No. 3-A

#### A. F. L.

Machinists Lodge #311 to all Gilfillan Employees

This is What it means--

Unionism is co-operation—workers organized into mutual-benefit societies, for their protection and betterment. It's the business of a union: First, (in wartime) to improve production for victory. To protect its members, singly or collectively against exploitation. To bargain collectively for its members—concluding agreements with employers, securing fair pay, fair treatment, fair conditions of employment. To organize—helping new groups to win the same benefits. To work unceasingly for better laws; against each new scheme to injure wage-earners. To protect the American employees' freedom to live decently; and some day, to see the boys come back to a free country, fit to live in.

Organized Labor won for us these benefits:-

Public schools. The eight-hour day. Abolition of child labor. Time-and-a-half after 40 hours. Social



(Testimony of Roy Johnson.)

Security and unemployment insurance. Walsh-Healy Act (labor standards on Government work). Wagner Act (freedom to organize and to bargain collectively). Protection of wage-claims against employers' crookedness or bankruptcy. Protection of working women and minors. Factory safety and sanitation. Minimum-wage law. Employers' liability in accidents. And many more!

That's What A. F. of L. Unions are for. (Of course, it's not what "independent" unions are for.) 3600 members of Lodge #311, A. F. of L. Machinists, hold it to be their duty to help Gilfillan workers get a fair deal by A. F. of L. representation. Everybody Send in Your Signed Cards and it won't take long.

[Post Card, Front]

Postage Will be Paid by Addressee  
No Postage Stamp Necessary if Mailed in the  
United States

Business Reply Card  
First Class Permit No. 16049, Sec. 510, P.L.&R.  
Los Angeles Calif.

International Ass'n of Machinists, Lodge 311  
Room 100 Labor Temple  
532 Maple Avenue  
Los Angeles, California

[Back of Postcard]

Authorization for Representation Under the  
National Labor Relations Act

[Emblem]

A. F. of L.

(Testimony of Roy Johnson.)

I, the undersigned, employee of

.....Company

.....Address

authorize Lodge No. 311, International Association of Machinists, American Federation of Labor, to represent me in negotiations for better wages and working conditions.

This authorization supersedes any similar authority previously given to any person or organization.

My Signature .....

My Address .....Phone .....

Kind of Work ..... Dept. ....

Date .....

Shift: Day ☐ Swing ☐ Graveyard ☐

41 Union Label

Q. (By Mr. Nourse) Will you look through again until you find some other one, if any? Have you found another? [744] A. Yes.

Q. Which one, point it out?

A. It was either one of those yellow ones. From recollection of reading it, I can't tell. I think it was the top one here.

Q. To the best of your recollection, then, it was the top one? A. Yes.

Mr. Esterman: What number is that?

Mr. Nourse: That is 3-B.

Q. (By Mr. Nourse) Within what period, to the best of your recollection, was that up?

(Testimony of Roy Johnson.)

A. About the same period of time that the other one was up, either shortly before or shortly afterward.

Mr. Nourse: I now offer 3-B.

Mr. Esterman: May I ask a question before you rule on the offer?

Trial Examiner Schneider: Yes.

Mr. Esterman: Mr. Johnson, did you just state that you weren't sure whether it was this yellow one 3-B or 3-D, but that it was one of these two?

The Witness: That is what I said. Afterward I got to thinking about the reading on there, and I am sure it is the first one.

Mr. Esterman: You are sure it is 3-B now?

[745]

The Witness: Yes, I am sure.

Mr. Esterman: And not 3-D?

The Witness: 3-B.

Mr. Esterman: Did he say where that was posted?

Q. (By Mr. Nourse) Was that posted?

A. In the machine shop.

Q. On the bulletin board?

A. Bulletin board.

Q. Do you know whether it was posted any place else or not?

A. No, sir, I didn't see it any place else.

Mr. Nourse: I offer 3-B in evidence.

Mr. Esterman: I make the same objection for the record.

Trial Examiner Schneider: Objection overruled.

(Testimony of Roy Johnson.)

(Thereupon, the document heretofore marked Respondent's Exhibit 3-B for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 3-B

[Stamp—Received Mar 27 1943 National Labor Relations Board Twenty-First Region Los Angeles]

For Wages—Conditions—Job Security

A. F. of L.

Machinists Lodge #311 Calling All

Gilfillan Employees—

[Drawing—Man with Microphone]

Years of company-union conditions—

What has it got you?

Scales of pay are disgracefully low at Gilfillan Working conditions are bad—no fair adjustment of grievances—little regard for your comfort, safety, or sanitation—straight-time work that should be overtime—pay-checks docked—no raises—a long history of forgotten promises and futile gestures, by the “union” which claims to represent your interests.

Such conditions cannot endure in the presence of an A.F. of L. union. Lodge #311 of the Machinists is made of, and run by, 3500 men and women like you. The Lodge's job is to build up and keep up fair wages and fair working conditions. Neither ill-treatment of its members nor alibis for “no-more-raises” are tolerated.

(Testimony of Roy Johnson.)

The cure needed at Gilfillan is a contract, guaranteeing A.F. of L. wages and conditions—a contract that you'll help to write, and will read and approve before it's signed.—That can and will be done, with your help. First, Lodge #311 needs your authorization to bargain for Gilfillan workers. To sign the card and mail it in costs nothing and risks nothing—it's your share in the drive to make Gilfillan a good place to work.

Don't Envy Union Wages! Organize and Get Them! Lodge #311 532 Maple Ave., L.A. (MU 2389—LU 7084)

[Drawing—Man at U. S. Mail Box.]

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Q. (By Mr. Nourse) Any others? Have you looked through them all? A. No, I haven't.

Q. When you get to one, let me know.

A. This salmon colored one I seen posted. I don't remember which billboard.

Q. That is Respondent's 3-G. And during what period was that, can you fix that more definitely? [746]

A. It showed up on the bulletin board just prior to the day they had the meeting over there.

Q. Just prior to February 17?

A. That's right. A day or two.

Q. And do you recollect which of the bulletin boards you saw it on? A. No, I don't.

Q. Have you looked through all of them now?

A. No, I haven't.

(Testimony of Roy Johnson.)

Mr. Nourse: I now offer 3-G in evidence. [747]

Trial Examiner Schneider: It may be admitted.

The Witness: I have seen other handbills, but I don't remember seeing them pasted on the board.

Trial Examiner Schneider: I didn't hear the answer.

Mr. Nourse: Will you read the answer, please?

(The last answer was read by the reporter.)

(Thereupon, the document heretofore marked Respondent's Exhibit 3-G for identification, was received in evidence.)

## RESPONDENT'S EXHIBIT No. 3-G

AF of L Machinists Lodge #311

To All Gilfillan Employees Men and Women

Now You're Cookin' With Gas!

Signed authorization cards come to the Union office in every mail! You're very much closer to Union representation, fair pay and fair treatment for Gilfillan employees. Next step is a

Gilfillan Employees Meeting

At the Woodmen Hall, 1726 Venice Blvd.

Wednesday, Feb. 17th

[Drawing.]

Purpose of meeting—to answer all questions about how Gilfillan will be made a good place to work. Union representatives will be there from 12 noon on Various shifts meet at—

1.00 PM—2:45—5:00—and 6:15 PM

This meeting is called in your interest—not the company's. Attend on your own time. Gilfillan



(Testimony of Roy Johnson.)

won't pay you for coming. Nor fine you for staying away. And—Production won't be interfered with.

[Stamped]: Received Mar 27 1943 National Labor Relations Board Twenty-First Region Los Angeles.]

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Q. (By Mr. Nourse) You mean other of the handbills which are part of Exhibit 3?

A. Yes.

Q. Did you see any of the others that are in Exhibit 3 in the plant? A. Yes, I have.

Q. What? A. Yes, I have. [748]

Q. Whereabouts?

A. All over; on the floor, in the parts basket, on tool boxes.

Q. Whose tool boxes?

A. Individual people in there. [749]

Q. How were they done?

A. Just laid on the tool boxes, or around the floor.

Q. (By Mr. Nourse) Is it true with respect to all of those Exhibits, all these hand bills that are a part of Exhibit 3, you saw them around the plant from time to time, in the manner you have described? A. Yes.

Q. What is it? A. Yes.

Mr. Nourse: I will now offer the remainder of these in evidence. [750]

Q. (By Mr. Nourse) By around the plant I

(Testimony of Roy Johnson.)

mean indoors, not out on the sidewalks but in the plant itself.

A. They weren't posted. They weren't on a billboard.

Q. No.

A. Most of them were thrown on the floors or in boxes, waste paper boxes, on top of tool boxes and benches.

Mr. Esterman: Before you rule on that offer, I would like to ask a couple of questions, if I may.

Trial Examiner Schneider: Yes.

Mr. Esterman: When Mr. Nourse asked you about whether you had seen all of these scattered about the plant, in the manner you have described, did you have in mind A.F. of L. bulletins only, or some other kind?

The Witness: Well, the A.F. of L. and there was one C.I.O. bulletin that I noticed. I looked at those two there.

Mr. Esterman: Will you show me the one you noticed?

The Witness: I am sorry, I didn't read it. All I knew it was a C.I.O. bulletin, whether it was either one of those two (indicating), I don't know.

Mr. Esterman: You don't know, then, whether respondent's Exhibit 3-E—I am showing it to you and calling your attention to the fact—was a C.I.O. bulletin or whether respondent's Exhibit 3-F was also a C.I.O. bulletin? You don't know actually whether those were scattered around the plant with the others? [751]

(Testimony of Roy Johnson.)

The Witness: No, I just made the statement I had seen one of them in the plant, scattered around.

Mr. Esterman: Well, will you show me which one? Was it one of those two (indicating)?

Mr. Nourse: If you know.

The Witness: I don't know which one.

Mr. Nourse: I will withdraw, from my offer, the two C.I.O. bulletins that are in here, but not from identification. I don't mean that. I will identify them with other witnesses. But I do offer the balance of them, which are A—— [752]

Trial Examiner Schneider: Respondent's Exhibits 3-C, D and H, will be admitted. [753]

#### RESPONDENT'S EXHIBIT No. 3-C

##### A. F. of L.

To All Gilfillan Employees—Lodge #311—A.F. of L. Machinists, congratulates the many who have sent in their signed authorization cards. To all the rest Wake Up! This is a drive to fair pay, fair conditions, fair treatment for all Gilfillan Workers. Neither teacher's pets nor phony "union" can stop it.

Lodge 311 is a labor union, existing to build up and keep up wages, conditions, job security, and war production. Members include skilled and unskilled—men and women—learners starting work at 60c to 85c per hour—craftsmen earning \$15 every eight-hour day. Their strength, bargaining power, experienced staff, are at your service. As

(Testimony of Roy Johnson.)

long as Gilfillan pays experienced workers less than learners get in Union shops, that help is needed. Until Gilfillan workers have an A. F. of L. Machinists' contract with fair pay and benefits, the drive goes on; and it may not take very long, judging by the cards sent in.

Since Every Employee Benefits by a Machinists' contract, everyone is asked to help get it. First, get in the rest of your signed authorization cards. With the cards, signed by a large number, the Lodge can be established as your bargaining agent, and negotiations begun. So—send in the cards—signers' names are kept secret—help get a better break for yourselves and for all your shopmates.

Lodge #311, International Association of Machinists American Federation of Labor 532 Maple Ave., L. A.-MU 2389

[Drawing with words: No Stamp Necessary.]

[Stamped]: Received Mar 27 1943 National Labor Relations Board Twenty-First Region Los Angeles.]

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## RESPONDENT'S EXHIBIT No. 3-D

A. F. of L.

Machinists Lodge # 311 To All Gilfillan Employees  
Who Said "It Can't Be Done"?

Who Said "There'll Be No Raises"?

"Independent" unions have to take such statements. A.F. of L. unions just go ahead and get wages and conditions. Some of you report to Lodge #311

(Testimony of Roy Johnson.)

that they are now, supposedly, getting the wage-levels which Machinists members reached 18 months ago. Why are raises 18 months late?

It's the familiar pattern of "independent" or company union moves to delay A.F. of L. organization:—low pay and no benefits—useless "independent" union—employees appeal to A.F. of L. Machinists—raises are refused—Machinists pass handbills, get signed authorizations—then sudden raises (around half large enough)—and "independent" union wants credit for getting them! Meanwhile, Lodge #311 gets rates like these (agreements concluded this week) #1: Airparts shop—Vernon—200 people—starting minimum 85c—2nd 30 days, 90c—3rd 30 days, 95c—thereafter, \$1.00 and up to \$1.50 per hour. #2—Airparts, Hollywood—120 people—starting 70c; 2nd month, 75c; 3rd month, 80c; 4th, 85c; thereafter 90c, up to \$1.50.

The drive goes on! to make Gilfillan a good place to work—with fair pay, fair benefits, and fair treatment for all Gilfillan workers. Send in the rest of your authorization cards—help win 1943 benefits and wages, thru

Lodge #311, A.F. of L. Machinists  
532 So. Maple Ave., L.A.—MU 2389—LU 7084



(Testimony of Roy Johnson.)

RESPONDENT'S EXHIBIT No. 3-H

AF of L Machinists Lodge #311  
Gilfillan Employees'  
Meeting

Friday, February 26th, 1943, meetings 1:00 to 6:30, according to shifts.

1726 Venice

This U. S. law protects you (the Wagner Act):—

“Section 7:—Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.”

“Section 8:—It shall be an unfair labor practice for an employer—‘(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7.’—

‘(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.’—

The AF of L has requested your employer to recognize Machinists, Lodge #311 as your bargaining agents. We are awaiting an answer.

In the meantime, attend the meeting and find out for yourself what your next step is. Let's find out why vital production is being curtailed by lay-off of the employees. Let's plan a program for the pending election.



(Testimony of Roy Johnson.)

Let's make it unanimous—join the majority that were initiated this week.

Let's make it 100%—AF of L.

Come to the meeting and bring a shop mate.

AF of L Organizing Committee.

[Stamped]: Received Mar 27 1943 National Labor Relations Board Twenty-First Region Los Angeles.

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Q. (By Mr. Nourse) Mr. Johnson, Mr. Esterman asked you in one question if in January there wasn't a general raise throughout the plant. Now, I don't remember your answer to that. Will you say whether or not there was a general raise to everyone, all the workmen in the plant?

A. No, there wasn't to all the workmen in the plant.

Q. The fact is there was an application then pending and unacted upon to give a general raise in the hydraulic department, wasn't there?

A. There was.

Q. Which had been requested by the E.M.A. and the management from the War Labor Board?

A. That's right.

Q. And that wasn't granted until May or the latter part of April?

A. Yes, around that time.

Q. And there was also an application filed for the drill press operators for a raise for drill press operators, which wasn't granted until about a week

(Testimony of Roy Johnson.)

before last, and which counsel haven't decided whether it was really granted or not; is that true?

A. That is true.

Q. And that hasn't been put in effect yet?

A. No, it hasn't. [755]

Q. Did all the women in the plant get the same raise?

A. No, sir.

Q. Did they all get raises to men of equal length of service and doing the same work?

A. I think they did, yes, from what I hear.

Q. And your request of Mr. Sparks was that the women be given raises equal to the men as had been done in other plants, is that true?

A. That's true.

Q. And when you approached Mr. Sparks in what capacity did you approach him?

A. As an E.M.A. representative.

Mr. Nourse: Are you going to offer that contract?

Mr. Esterman: I ask that Board's Exhibit 12 be received in evidence.

Trial Examiner Schneider: Any objection?

Mr. Nourse: None.

Trial Examiner Schneider: It may be received.

(Thereupon, the document heretofore marked Board's Exhibit 12 for identification, was received in evidence.) [756]

(Testimony of Roy Johnson.)

BOARD'S EXHIBIT No. 12

AGREEMENT

This Agreement made and entered into by and between Gilfillan Bros., Inc., hereinafter called the "Company", and the Employees' Mutual Association, hereinafter called the "Association", as exclusive bargaining agency acting for and on behalf of the employees of the Company, which employees in this contract are referred to as "Employees":

WITNESSETH:

That, Whereas, the Association has heretofore been certified by the National Labor Relations Board as the organization of the employees of the Company entitled to represent said employees, and

Whereas, the Company recognizes the Association as the representative of its employees for the purposes of collective bargaining for the mutual benefit of the Employees, and

Whereas, the contract between the Company and the Association entered into under date of the First day of May, 1942 will, by its terms, expire on the First day of June, 1943, and the parties hereto desire to continue said contract in effect but under the terms and conditions hereinafter stated.

Now, Therefore, For the Purpose of Continuing in Effect the Contract Relationship Between the Company, Its Employees and the Employees' Mutual Association, It Is Agreed As Follows:

(Testimony of Roy Johnson.)

Article I.

The Association represents that the Employees of Gilfillan Bros., Inc. have organized and that their organization is the Association, and that the Constitution and By-Laws of the Association have been adopted by a majority of the Employees.

Article II.

The Company recognizes the Association as the sole representative of its Employees for the purpose of collective bargaining for the mutual benefit of the employees.

Article III.

This agreement shall become effective as of May 1, 1943, upon its acceptance by the Company and by the Association, through its duly authorized officers, and shall remain in effect for a period of one year and thereafter until thirty (30) days after one of the parties shall give notice to the other of the termination of this contract. During said 30 day period, each of the parties hereto agrees to meet in conference with the other with the view of effecting a new agreement.

Article IV.

The Company has, and shall continue to have, the complete and exclusive right and power to manage its operations and direct the working forces, and to hire, classify, grade, suspend, discharge, discipline, promote and demote or transfer its employees. The Company agrees, however, that in the event it shall suspend or discharge any employee it

(Testimony of Roy Johnson.)

will, if requested so to do by the Grievance Committee of the Association within three (3) days after such discharge or suspension, state fully to said Grievance Committee the reasons for such discharge, and will give consideration to any reasons presented by said Grievance Committee as to why said order of discharge or suspension should be rescinded, but the Company's decision whether or not to rescind such order shall be final.

#### Article V.

The Company agrees to establish a basic minimum starting wage for beginners at the rate of 60c per hour, and that there shall be an automatic 5c per hour wage increase each and every thirty days until said Employees reach the hourly rate of 75c, at which time said Employees shall be classified into one of the existing departments of the company, and his or her then rate of pay determined after due consideration of the adaptability and individual merit of said Employee.

A schedule of the minimum wages paid within the existing departments of the Company for all Employees who have served their three-months' term in which the automatic raises are granted, as aforementioned, or for new Employees who are qualified for positions

(Page 3 of Original Starts Here)

other than novices or beginners, is attached hereto, marked Exhibit "A", and made a part hereof.



(Testimony of Roy Johnson.)

Article VI.

The Company agrees that its policy as to seniority shall be as follows:

1. In all cases of lay-offs, promotions, demotions and transfers, the following factors shall be taken into consideration:

a. Knowledge, training, ability, skill, efficiency, and conduct while on duty.

b. Length of continuous service. When Employees are relatively equal in knowledge, training, ability, skill, efficiency, and conduct, then length of continuous service shall govern.

2. An employee whose services to the Company are suspended for a period of not more than sixty days because of illness, accident or other cause which, in the judgment of the Company, is beyond the Employee's control shall not lose his seniority.

Article VIII.

As between the contracting parties (without in any way constituting an admission of the Company that the Federal Wages and Hours Act is applicable to the Company, or that the Company is bound is bound by the provisions thereof), the Company agrees to pay all employees covered by this contract overtime as set forth and provided in the Federal Wages and Hours Act and the orders and regulations promulgated thereunder, as said Act and the orders and regulations are now in effect, or as the same may be hereinafter amended.

In the event any of the rates of pay to which the parties have hereby agreed are in excess of the



(Testimony of Roy Johnson.)

rates of pay now fixed, or which may be hereafter fixed, by any Governmental proclamation, regulation or by any statute, the violation of which would subject The Company to any penalty whatsoever, then the Company shall not be obligated by any of the provisions of this contract to pay more than a rate of pay computed in accordance with such Governmental regulation, proclamation or statute; provided, however, that the Company agrees to join with the Association in filing any application or

(Page 4 of Original Starts Here)

petition permitted by law for the purpose of permitting the payment of such wages herein agreed upon as may be in excess of those fixed by any proclamation, regulations or statute.

The parties agree that if any of the terms of conditions of this contract shall be in violation of any present or future statute of Governmental regulation or order, that then such term or conditions shall be suspended during the time that said statute, regulation or rule is effective, but that the remainder of the terms and conditions of this contract shall remain binding upon the parties.

#### Article VIII.

All employees shall be paid time and one-half for work on holidays. For the purposes of this agreement the following days only shall be considered holidays:

New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

(Testimony of Roy Johnson.)

Provided, however, that if any of said days is declared not to be a holiday, for the purpose of the computation of wages, by any statute or Governmental rule, order or regulation, then such day shall be excluded from the overtime provisions of this paragraph.

#### Article IX.

Each employee of the Company who has been in the continuous service of the Company for at least one (1) year prior to June 1st, 1943 shall be entitled to two (2) working days' vacation with pay during the period from June 1, 1943 to May 30, 1944.

If this contract shall be extended for a term of one year, or more, beyond April 30, 1944, and the proper Governmental authorities shall authorize the extension of the vacation periods heretofore granted by the Company to its Employees, the Company will give to each Employee, who has been in its continuous service for more than one year prior to June 1, 1944, and who has not absented himself from service to the Company for more than three (3) working days during the twelve months immediately preceding his vacation period without the written consent of the Company or proof satisfactory to the Company that his absence was due to causes beyond his control, one week's vacation with pay, said pay to be computed on the basis of the work week then in effect, but a straight time. The Company agrees to join with the Association in

(Testimony of Roy Johnson.)

making application to the proper Governmental agency for permission to grant an increase in its

(Page 5 of Original Starts Here)

vacation period as in this paragraph before mentioned.

The vacation periods provided for by this Article shall be at the discretion of the Company, but the Company will endeavor to set all vacation periods between June 1st and October 1st; provided that, in its judgment, the granting of such vacation periods shall not interfere with the production of defense materials.

#### Article X.

The Association agrees that there shall be appointed from among its members a committee of not to exceed five (5) persons who shall constitute the Grievance Committee of the Association and that the members of said committee shall have full power, by a majority vote thereof, to act for and on behalf of the Association in passing upon grievances of employees and any matters arising between the Association and the Company.

The Company agrees to appoint one or more representative who shall be empowered to act for the Company in meetings with the Grievance Committee of the Association in passing upon any grievances of Employees and any matters arising between the Company and the Association.

The Company agrees to furnish and maintain, at a suitable location within its plant, a grievance box in which any grievance of any employee, whether a

(Testimony of Roy Johnson.)

member of the Association or not, may be deposited. The Association agrees that its Grievance Committee will consider all grievances deposited by an employee in said grievance box provided the same is signed by the employee, and that it will present such grievances as in its judgment are meritorious to the representatives of the Company at the next regular meeting between said representatives and said Grievance Committee.

A meeting shall be held by the Grievance Committee and the representatives of the Company on the Second and Fourth Monday of each and every month. Employees who are members of the Association Grievance Committee shall be paid by the company at their regular hourly rate for such time as is spent by them in attendance upon joint Association and Company committee meetings.

(Page 6 of Original Starts Here)

Employees whose grievances have been presented by the Grievance Committee to the Company's representatives shall be advised by the Grievance Committee of the action taken thereon. If an Employee shall have deposited a grievance in said box and shall not be advised of the action taken thereon within 15 days of such deposit, he may deposit in said box a request for action on said grievance and if, within 20 days after such deposit, he shall not have been advised of the action thereon, he shall have the right to be personally present at the next regular meeting of the Grievance Committee and the

(Testimony of Roy Johnson.)

Company's representatives and to present his grievance in person.

### Article XI.

The Association agrees that it will not call or countenance a strike unless such strike shall have been first authorized by a two-thirds vote of all the members in good standing of the Association, which vote shall be taken by secret ballot. The Association further agrees that no strike shall be called until two weeks after the Company shall have been advised in writing of the result of said ballot, the intention to call a strike, and the reasons for said strike, and during said period of two weeks negotiations shall be held between the Company and the Grievance Committee of the Association in an endeavor to settle the dispute, and both parties agree to use every reasonable effort to arrive at an agreement which will prevent such strike.

#### Association:

MARGARET H. KENNERY

A. V. ~~BLEWEL~~ (?)

[In pencil]: ~~BLEU~~ BLEUEL

F. L. CUNNINGHAM

OTTO C. STEGNER

CARMEN FAURIA (Secretary)

JOSEPHINE DVARIZONAS

ROY JOHNSON

#### Company:

S. W. GILFILLAN Pres.

.....  
 .....



(Testimony of Roy Johnson.)

# EXHIBIT A

The Company agrees to the following rates of pay:

Screw Machine (automatic) .....	Class A	\$1.10 to \$1.25
	“ B	.95 to 1.05
	“ C	.85 to .95
Turret Lathe Operator .....	Class A	\$1.10 to \$1.25
	“ B	.95 to 1.00
	“ C	.85 to .95
Milling Machine Operator .....	Class A	\$1.10 to \$1.25
	“ B	.95 to 1.05
	“ C	.95 to .95
Drill Press Operator .....	Class A	\$ .95 to \$1.00
	“ B	.80 to .90
	“ C	.75 to .80
Inspection Department .....	Class A	\$1.10 to \$1.25
	“ B	.95 to 1.05
	“ C	.85 to .95

Classification of Class “A”, “B”, and “C” operators on the mills, turret lathes, automatics and inspectors:

Class C—Operator who is unable to set up or sharpen tools and provides tools for checking work.

Class B—Operator capable to make set ups, sharpen tools, check work and has sufficient precision tools to operate machine and check work.

Class A—Operator capable of grinding all tools, make his own set ups and has complete set of tools for operating machine and checking work.

The Company reserves the right to designate what type of tools are necessary for operator to operate machine and check work.

Burr and Filing Department.....Class A \$ .75 to \$ .80

Sanders and Buffers ..... Class A | \$ .80 to \$ .85 |



## (Testimony of Roy Johnson.)

Bench Precision Assemblers.....	Class A	\$1.05 to \$1.20
	“ B	.90 to 1.00
	“ C	.80 to .90
Radio Assemblers .....	Class A	\$1.05 to \$1.20
	“ B	.90 to 1.00
	“ C	.80 to .90
Electrical Assemblers .....	Class A	\$ .90 to \$1.05
	“ B	.85 to .90
	“ C	.75 to .80

The set up men in the machine shop to receive at least \$.10 per hour more than the top men under them, and Foremen and Foreladies to receive at least \$.15 per hour more than their set up of top man.

Swing Shift employees shall receive \$.08 per hour more than day shift employees. Night Shift employees shall receive \$.05 more per hour than the day shift employees.

Any worker not having been taken into consideration in this contract shall have the opportunity of having a committee of E. M. A. members and the Company meet together so they can have a fair scale of wages set to compare favorably with what Industry is paying.

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Q. (By Mr. Nourse): I show you Respondent's Exhibit 11 for identification and ask you what that is?

A. This is an agreement entered into by the Employees Mutual Association and the Gilfillan Bros. to extend the contract for a period of 30 days; namely, to June 1, 1943.

Q. Was it signed on the date it bears, April 29, 1943? A. Yes, sir, it was.

Mr. Nourse: I now offer that as Respondent's Exhibit 11.

(Testimony of Roy Johnson.)

Trial Examiner Schneider: It may be admitted.

(Thereupon, the document heretofore marked Respondent's Exhibit No. 11, for identification, was received in evidence.)

### RESPONDENT'S EXHIBIT No. 11

This agreement entered into April 29, 1943 at Los Angeles, California.

Gilfillan Bros., Inc. and Employees Mutual Association agrees to extend the present contract which terminates April 30th, 1943, for a period of 30 days, namely, to June 1st, 1943.

All persons receiving increases in wages at the signing of new contract, their increases in wages will be retroactive to May 1st, 1943.

Member of E.M.A. Delegates

JOSEPHINE DVARIZONAS

FRED G. STECK

OPAL SIGERSON

OTTO C. STEGNER

CARMEN FAURIA

F. L. CUNNINGHAM

A. V. BLUEL

ROY JOHNSON

J. G. GILFILLAN

4/29/43

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Mr. Nourse: At the request the Examiner made during the recess I now offer to read into the record the following, which I will first show to counsel for the Board, which is from an agreement between

(Testimony of Roy Johnson.)

Gilfillan Bros. and Employees [757] Mutual Association, dated April 24, 1942.

I have shown the matter to be read into evidence to Mr. Esterman. Mr. Esterman, have you any objection?

Mr. Esterman: No objection.

Mr. Nourse: Article V. "This agreement shall be and remain in force the period of one year from the date hereof and shall expire on the 30th of April, 1943."

Trial Examiner Schneider: What is the document from which you are quoting that?

Mr. Nourse: An agreement entitled: "Agreement entered into between Gilfillan Bros., Inc. and the Employees Mutual Association," dated the 24th day of April, 1942, signed by Albert Zapf, L. M. Pfleger, Lillian Cornell, I guess it is, Alfred L. Askey, Leroy Halloran, Roy Johnson, and L. Gianini, on behalf of the representatives of E.M.A.; S. W. Gilfillan, Gilfillan Bros., Inc. [758]

### Redirect Examination

By Mr. Esterman:

Q. You said, Mr. Johnson, that the women got this increase from what you hear. Isn't that right, isn't that what you said?

A. I didn't look at their checks; they tell me that.

Q. You heard about it?

A. They tell me that.

Q. Were you speaking of the increase of sometime in January when you told that to Mr. Nourse?

(Testimony of Roy Johnson.)

Is that what you had in mind, the increase sometime in January, 1943?      A. Yes. [759]

Q. (By Mr. Esterman): Did that change come about as the result of any bargaining between the E.M.A. and the company?

A. Yes, we asked for that raise, so in a way we asked for the raise prior to the time that it was given.

Q. Prior to January?

A. I couldn't recall what the dates were.

Q. If you asked for it, it must have been prior to the time it was given.

Mr. Nourse: He says so.

The Witness: When you asked if it was in January, it might have been in December.

Q. (By Mr. Esterman): I see. Who was "we"?      A. The E.M.A.

Q. Was it a committee?

A. No, it wasn't. It was myself acting as a committee of one. It wasn't any more than one person. [761]

Mr. Esterman: Well, if he wants to say there was a meeting at which he was the E.M.A. representative, let him say so. I want to know if there were any meetings between [762] the company and the E.M.A., by its officers, for the purpose of discussing wage increases for women, and specifically the wage increases which took place in January. I think that is a plain question.

The Witness: Well, I talked to Mr. Sparks myself about it.

(Testimony of Roy Johnson.)

Q. (By Mr. Esterman): Did you have a meeting with him?

A. I don't know what you mean by the word "meeting".

Q. How did you come to talk to him about it? This is important to me, I would like to know.

A. I walked into his office and talked to him about it.

Q. Had you made arrangements to discuss it with him before? A. No.

Q. You just went in, and you said to him, "How about increases for the women", something like that?

A. I don't remember what the conversation was exactly about, but—I think it was more or less explained that other plants were paying equal money for women and men alike.

Q. By you? A. That is right. [763]

#### Recross Examination

By Mr. Nourse:

Q. You went into see—I am talking about the wage increase for women. Had you had any requests from women members of the E.M.A. that you take that matter up? A. Yes.

Q. And you went in there. Were you then president of the E.M.A.? A. I was.

Q. Was that fact known to Mr. Sparks?

A. He knew it—I presume he knew it.

Q. Did you tell him that you were coming there to present that request, on the part of the members?

A. Words to that effect.

(Testimony of Roy Johnson.)

Q. I mean, in substance. A. Yes.

Q. And you don't know what operated on his mind or on the company's mind when it gave raise?

A. No, sir. [764]

Q. (By Trial Examiner Schneider): What did Mr. Sparks say when you presented your request?

A. He said he would think it over and let me know later. [765]

Q. What was the next you heard about the matter?

A. Well, the next I heard about the matter was some—that some of the people were going to get a raise in the machine shop department.

Q. Did Mr. Sparks indicate to you, in your conversation, that a raise would be given?

A. No, he didn't. He said he would think it over.

Q. Did you ask him, did you suggest to him what the amount of raise should be?

A. At the time I was in talking to him I made the statement that in other plants men and women were both, at that time, starting at 60c an hour, and they didn't discriminate between the 50c and 60c.

Q. And what was the wage increase which was subsequently granted?

A. Well, the automatic raise period went in shortly after that.

Q. Well, were the raises, which were subsequently granted, in accordance with your requests?

A. Not entirely.



(Testimony of Roy Johnson.)

Q. In what respect did they differ?

A. I think at that time that I put the request through, that other matters in the machine shop was taken up, or the turret lathes, and I don't think that any action was taken on that at that time. [766]

Q. Well, now, in what manner did you hear or how did you come to learn that raises were granted after your request? What was the source of your information?

A. I am trying to think who told me. It was either Mr. Nevins or Mr. Cramer. I believe it was Mr. Cramer. That is the best belief I have at this time.

Q. Do you have any recollection where he told you, where it was?

A. In the machine shop.

Q. In the machine shop?

A. Yes, when I was working.

Q. Did he just come up to you and tell you that certain raises were granted?

A. That's right.

Q. Up to that time did you have any further talk with Mr. Sparks?

A. Not about that matter, no.

Q. Then all you know about it is you went in and made a request to Mr. Sparks, and the next thing you knew was that Mr. Cramer, you said, came up to you in the shop and told you that certain raises had been granted?

A. Yes. [767]

Q. (By Trial Examiner Schneider): While you were leadman did you ever discharge any employees?

(Testimony of Roy Johnson.)

A. No, sir, I never did. I never was a leadman; I was only in there on a temporary basis, and I never was a leadman.

Q. Did you ever hire any employees while you were in that department? A. No.

Q. Did you ever make any recommendations that anyone be discharged or hired?

A. No, sir.

Q. Did you ever make any complaints to any of your superiors with respect to persons who were working on machines on which you were doing set up?

A. If I did I can't rememer of any. [773]

Q. Did any of the employees for whom you did set-up, or instruct them while you were temporary leadman——

Mr. Nourse: The Examiner's voice is very, very low.

Trial Examiner Schneider: I am very sorry. Will you read what we have?

(The last question was read by the reporter.)

Q. (By Trial Examiner Schneider) ——ever come to you and ask you for a raise?

A. I have had several of them come to me and tell me they had asked for a raise, gone to Mr. Hoenes, and if he said anything to me, would I put in a good word.

Q. While you were temporary leadman, did any of the persons on machines in your charge perform unsatisfactory work?

(Testimony of Roy Johnson.)

A. Yes, there is always a case where someone is misreading a micrometer, or misreading a print, or doesn't put it in the jig right, that you have to show them, especially the new people that you get from the burr department, they don't have any tools, you have to continually watch them.

Q. What do you do in a case like that? What did you do in a case of that kind?

A. Show them how to do it right.

Q. Did any of them persist in not doing it right after you had instructed them? A. No, sir.

Q. Did you ever report to your superiors any of the people [774] on the machines under you or in your charge who were performing unsatisfactory work? A. I don't remember of any time.

Trial Examiner Schneider: I think that is all.

Q. (By Mr. Nourse): As a matter of fact, how often was Mr. Hoenes, while you were there, up and down around those machines, how often during a shift?

A. Sometimes he was over at my place half the night, sometimes he would be around every half hour, every hour.

Mr. Nourse: That is all. [775]

Mr. Nourse: At this time, if the Trial Examiner please, the record being now complete as to the matter of the contract involved here, I renew the motion to dismiss this proceeding, insofar as it affects the contract in effect. [776]

Trial Examiner Schneider: I will deny the motion. [777]

MYRTICE DE SHAZO

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Esterman:

Q. Your name is Myrtice De Shazo, is it not?

A. Yes.

Q. And you live where?

A. 1414 Constance.

Q. You will have to speak up so those gentlemen over there can hear you.

A. 1414 Constance.

Q. Los Angeles?

A. Yes.

Q. What is your work?

A. Now, or was?

Q. Now.

A. Now I am working at the Auto Club as biller.

Q. That is the Southern California Auto Club?

A. That is right.

Q. You were, at one time, employed by Gilfillan Bros., [781] were you not?

A. That is right.

Q. And you were one of the girls who was discharged on February 22, 1943?

A. Yes.

Q. Now, when did you go to work for Gilfillan Bros.?

A. November 24.

Mr. Nourse: November 24?

The Witness: November 24.

Q. (By Mr. Esterman): 1942?

A. That is right.

Q. And you were on the 2:30 to 11:00 shift, were you not?

A. Yes.

Q. That was all the time you were employed there?

A. Yes.

(Testimony of Myrtice De Shazo.)

Q. Who was your immediate superior?

A. Margaret Goebel.

Q. You were in the burring department?

A. That is right.

Q. While you were there did you work on the buffing machine at any time?      A. Buffer, yes.

Q. Or the sander?      A. Yes.

Q. Did you work on the drill presses? [782]

A. Yes.

Q. Did you work on any other machinery in the machine shop?      A. I believe not.

Trial Examiner Schneider: The answer is no?

The Witness: That's right.

Q. (By Mr. Esterman): Your starting rate of pay was what?      A. 53 cents.

Q. Per hour?      A. Per hour.

Q. Did you receive any increases while you were there?

A. Yes, a 20 cent raise, which I think was general, at least, in the burring department.

Q. And you received that approximately when, if you know?

A. See, it was either in January or February, the exact date I don't remember. The raise was given while I was out from work.

Q. Were you away from work for a period of time?

A. From about the 18th of January until about the 15th of February, due to illness and death in my family.

(Testimony of Myrtice De Shazo.)

Q. And the increase was given in your absence?

A. Yes.

Q. You came back to work on what date, then?

A. February 15.

Q. That was at 73 cents an hour? [783]

A. 73, yes. [784]

Q. (By Mr. Esterman): Please speak up, Mrs. De Shazo. Did you become a member of the E.M.A.? A. Yes.

Q. Would you state when or approximately when?

A. In November; the exact date, I don't remember.

Q. In 1942?

A. About the 27th. Yes, just a few days after I had gone to work there.

Q. Will you relate the circumstances under which you joined [787] the E.M.A.?

A. There was a meeting posted, a notice of a meeting of the E.M.A., and I asked what the E.M.A. was. And Marjory told me it was a company association for the employees, and suggested I go up and talk to Buck up at the tool crib. I don't know what Buck's other name was; never did know. But I didn't go at that time, and he sent word back there for me to come back to the tool crib, and I went back there and asked him what he wanted.

Mr. Nourse (Interrupting): Objected to as hearsay. Certainly no showing that Mr. Buck is a leadman or anything, other than an employee about equal with this one.



(Testimony of Myrtice De Shazo.)

Q. (By Mr. Esterman): Don't relate any conversation with Mr. Bucknell. Tell us what you did.

Mr. Nourse: I ask it be stricken, the portion she has stated; just pure hearsay.

Mr. Esterman: You mean as to Bucknell's statements?

Mr. Nourse: Yes.

Mr. Esterman: Yes, I concur in that. [788]

Trial Examiner Schneider: Very well, it may be stricken.

Q. Yes. What did you do?

A. I went over to the tool crib and gave him the 25 cents; came back and went back to work.

Q. Now, calling your attention to the time when you returned to work, after your absence which you stated was on February 15th—— A. Yes.

Q. ——at or about that time did you have a conversation with Marjory Goebel on the subject of the E.M.A.? A. She——

Mr. Nourse (Interrupting): Just a minute. Just answer that yes or no, please.

Mr. Esterman: Yes.

The Witness: Yes, I did.

Q. (By Mr. Esterman): All right. Now give counsel a chance to object, if he intends to.

Will you tell us where you had this conversation with her?

Mr. Nourse: Well, that is preliminary. [789]

Q. (By Mr. Esterman): Go ahead.

A. In the department, in the burring department at the table where we were working.

(Testimony of Myrtice De Shazo.)

Q. Was anyone else present, besides you and she? A. Yes.

Q. Well, did anyone else take part in the conversation? A. Not that I remember.

Q. You mean there were people around working at their benches?

A. Yes, there were four or five of us at the table.

Q. Will you tell us what was said at that time?  
Mr. Nourse: Objected to as calling for hearsay.  
Trial Examiner Schneider: Overruled. [790]

Q. (By Mr. Esterman): You may answer.

A. She asked me if I was paid up in my E.M.A. dues I told her I wasn't, and I wasn't going to pay any more. She said I had no reason to object, the only meeting I had been to I won a bond, and that was enough to pay my dues for a year.

Q. Was that about the conversation?

A. Just about.

Q. I think you have testified that you were off beginning sometime in January. What was that date?

A. About the 18th of January, until about the 15th of February.

Q. There has been testimony that sometime in the early part of January there were some A. F. of L. machinists organizational activity around the plant, around the premises. Did you participate in that activity? A. Yes.

Q. Will you relate to what extent, please?

A. I passed out the cards that were given to me,

(Testimony of Myrtice De Shazo.)

and, of course, talked the matter over all the girls.

Q. Well, now, what cards did you pass out, please?

A. They were little membership cards that were given to me, that we were supposed to sign and turn in and ask the union to represent us.

Q. Those were machinists' cards?

A. Yes, that is right. [791]

Q. You obtained those from the organizer?

A. Beg pardon?

Q. You obtained those from the machinist organizer? A. Yes.

Q. Where did you pass out these cards?

A. Just outside where we ate our lunch, to the girls while we were outside eating.

Q. During the lunch hour? A. Yes.

Q. And do you know how many of those you passed out?

A. Not exactly, I would say about 25, 15 to 25.

Q. That was over what period of time? By that I mean was it over a period of weeks or days, or what? A. No, it ran about two days.

Q. Did you attend any E.M.A. meeting?

A. One.

Q. Do you know which one that was?

A. No, I don't know the exact date.

Q. Well, was it before you were off?

A. Oh, yes.

Q. Or after? A. Before.

Q. Was it in January?

A. It must have been in January.

(Testimony of Myrtice De Shazo.)

Mr. Nourse: Just a moment. I think you better give [792] the witness a chance to consider that. I think she was off during the period of the January meeting.

Q. (By Mr. Esterman): Well, as a matter of fact, the record shows— —

A. I don't remember the date.

Q. Just a moment. The record shows, Mrs. De Shazo, that there was an E.M.A. meeting the first part of January, I believe the first Monday. Now, after my telling you that, does that help you recall when you attended the meeting?

A. The first of January?

Q. The first part of January.

A. The first part of January?

Mr. Nourse: I am wrong. I beg your pardon.

Q. (By Mr. Esterman): Does that sound like about the time, the first part of January?

A. Yes.

Q. And that is the meeting that you attended?

A. Yes.

Q. Now, you recall the meeting was scheduled for about 5:30? A. Yes.

Q. And calling your attention to the afternoon of that day, that is the evening of that meeting, will you tell me whether you had a discussion with Marjorie Goebel regarding the E.M.A.?

A. Yes, I walked over to the meeting with her.

[793]

Q. All right. Now, tell me what your conversation with her was at that time.

(Testimony of Myrtice De Shazo.)

Mr. Nourse: Objection. Calls for hearsay.

Trial Examiner Schneider: Same ruling.

The Witness: Shall I proceed?

Q. (By Mr. Esterman): You can answer.

A. I asked her if we were going to be docked for the time we were over there, and she said she wasn't sure, she didn't know, but supposed that we would be, just as we had been docked for the time we were at banquets, a banquet.

Q. Was there any discussion between you as to whether or not attendance was voluntary or compulsory?

A. I asked her before we started over there if we had to attend, and she said yes.

Mr. Esterman: I show you a business reply card.

Mr. Nourse: Pardon me for interrupting. You were going to let these other witnesses know by 10:00 o'clock whether you wanted them down here.

Mr. Esterman: Yes. Can we have them?

Mr. Sparks: May I be excused?

Trial Examiner Schneider: Yes.

Q. (By Mr. Esterman): I show you Board's Exhibit No. 13, [794] for identification, being a business reply card addressed to the International Association of Machinists, and ask you if this is your signature on the reverse side, Myrtice De Shazo? A. Yes.

Q. And was it signed by you on the date it bears, January 14, 1943? A. Yes.

Q. And was it mailed by you to the addressee on the card? A. Yes.

(Testimony of Myrtice De Shazo.)

Mr. Esterman: I offer this in evidence. I don't concede that there is any limitation here, since it says she was employed in the burring department.

Trial Examiner Schneider: Any objection, Mr. Nourse?

Mr. Nourse: No.

Trial Examiner Schneider: Mr. Wilson?

Mr. Wilson: No objection.

Trial Examiner Schneider: It may be received.

(Thereupon the document heretofore marked for identification as Board's Exhibit No. 13, was received in evidence.)

BOARD'S EXHIBIT No. 13

[Postcard]

[Stamped]: 10 Los Angeles Calif Jan 11 11 PM  
1943

[In cut]: Postage Will be Paid by Addressee  
Business Reply Card

First Class Permit No. 16049, Sec. 510, P. L. & R.,  
Los Angeles, Calif.

International Ass'n of Machinists, Local 311

Room 100 Labor Temple

532 Maple Avenue

Los Angeles, California

John V. Cralley

Business Agent

Authorization for Representation Under the  
National Labor Relations Act

I, the undersigned employee of the (Print full  
name of Company) Gilfillan Bros Inc employed as



(Testimony of Myrtice De Shazo.)

(Print your occupation or a description of your job)  
Burring Dept at (City) Los Angeles (State) Calif  
(Location of shop) Venice Blvd. Home address  
1414 Constance St. L. A. hereby authorize the Inter-  
national Association of Machinists, or the Los An-  
geles Metal Trades Council, affiliated with the  
American Federation of Labor, to represent me  
and, in my behalf, to negotiate and conclude all  
agreements as to hours of labor, wages and other  
employment, conditions in accordance with the pro-  
visions of the National Labor Relations Act of  
July 5, 1935.

The full power and authority to act for the under-  
signed as described herein supersedes any power or  
authority heretofore given to any person or organ-  
ization to represent me, and shall remain in full  
force and effect for one year from date and there-  
after, subject to thirty (30) days written notice of  
my desire to withdraw such power and authority  
to act for me in the matters referred to herein.

(Date) 1-14-43

MYRTICE DE SHAZO

(Signature of employee)

JACK DE SHAZO

(Witness)

[Union Label]: 41

[Stamped]: Check Shift 1st - 2nd - 3rd

(Testimony of Myrtice De Shazo.)

Q. (By Mr. Esterman): May I refer you back for a moment to your testimony about the extent of your A. F. of L. activity. How did you obtain the cards that you passed out outside the Gilfillan plant?

A. I called the Temple, they referred me to Mrs. Volz, and [795] I talked to her.

Q. You were referred to Mrs. Volz?

A. Yes.

Q. You mean you called the Labor Temple and they told you to talk with her? A. Yes.

Q. Go head.

A. And she agreed to bring me the cards. May I say why I called her? Is it necessary? But, anyway, I called her because I was dissatisfied and I called her and discussed the matter with her.

Mr. Nourse: I guess you did, whether you may or not.

Q. (By Mr. Esterman): If you will just try to answer the question, I will try to think of the next question while you are answering the last one.

You were, in fact, one of the first people to be active on behalf of the Machinists, weren't you?

A. Yes, I understand so.

Q. You are here on a subpoena, are you not?

A. Yes.

Mr. Esterman: That is all.

#### Cross Examination

By Mr. Nourse:

Q. Was there a bond sold or auctioned off, or raffled off at the meeting you attended?

(Testimony of Myrtice De Shazo.)

A. I wouldn't say raffled off; it was given by the number [796] that we drew as we went in the door.

Q. That was in December, wasn't it, the first Monday in December?      A. In December?

Q. Yes.

A. I don't know my dates exactly on what time that meeting was; I can't answer that, because I don't know.

Q. If I told you there was none auctioned in January, or drawn in January, and one was in December, would that help you any?

A. It was either in January or December.

Q. What?

A. It was either January or December. I have the bond.

Q. How many people were at the meeting?

A. I haven't the faintest idea.

Q. Give me your best judgment.

A. As to how many people was at the meeting?

Q. Yes, where you won this—was it a \$25.00 bond?      A. \$25.00 bond.

Q. How many people were there?

A. I guess 150.

Q. 150 altogether?      A. Yes.

Q. Did you know how many were employed in the plant at the time? [797]      A. No.

Q. Would you know approximately?

A. No.

Q. You knew it was considerably over 300, didn't you?

(Testimony of Myrtice De Shazo.)

A. Yes. There was a large personnel there.

Q. What?

A. There was a large personnel there. I don't have any idea how many was there.

Q. Right in the working portions of the plant you knew there were over 300? A. Yes.

Q. And did it occur to you when you got there that there were only 150; that 150 more, at least, weren't doing what they were compelled to do, to attend that meeting?

A. No, because I didn't know how many were employed there.

Q. You knew there were over 300, you just said.

A. Uh-huh.

Mr. Esterman: I didn't hear her say anything to that.

The Witness: Yes, I answered that.

Q. (By Mr. Nourse): It never occurred to you that at least half the plant were disobeying orders and not going, did it? A. No, it didn't.

Q. Still, Miss Goebel had just said to you it was compulsory that they go?

A. You are right. [798]

Q. Did you think she meant that that was a union rule of the E.M.A., that members had to go?

A. I don't think I even thought about it.

Q. You didn't pay any attention to what she said at all?

A. I just remember her telling us we should go.

Q. It made no impression on you, and you didn't act? A. Act how?

(Testimony of Myrtice De Shazo.)

Q. You didn't go because she told you that, did you?

A. Yes, I went because she told me that.

Q. I thought you said she told you that on your way over?

A. We discussed the matter before we left the building.

Q. You testified that she told you that on the way over.

A. Yes. But I didn't say we hadn't discussed it before then.

Q. Now, you say you testified she told you before you started and repeated it on the way over?

A. You are right.

Q. But you didn't think a thing about it, as to whether she meant it was the E.M.A. rules or company rules?

A. No.

Q. And it never occurred to you when you got there that there were only 150 out of 300 there, that didn't register to you as being odd at all?

A. No.

Q. So you didn't think it was the employees that had to go? [799]

A. Who else would go but the employees?

Q. What?

A. Who else would go but the employees?

Q. Too much street-car noise outside.

A. Maybe I don't understand.

Trial Examiner Schneider: Read the question and answer, please.

(The record was read by the Reporter.)

(Testimony of Myrtice De Shazo.)

Q. (By Mr. Nourse): Well, it might be limited to union members, E.M.A. members, might it not?

A. Yes.

Q. And did you think that the meeting was limited to E.M.A. members?

A. I don't remember even thinking about it.

[800]

Q. (By Mr. Nourse) Now, were you put on an A. F. of L. committee? A. No.

Q. You were told to pass the cards out in the plant? A. In the plant? No.

Q. You did? A. Not in the plant.

Q. Well, now, this alleyway that you speak of—— A. Is that part of the plant?

Q. ——is inside the walls of the building, but it is open overhead and it is just a little spare between two buildings?

A. If that is considered part of the plant, I will say yes.

Q. And employees, from both buildings, congregated there? A. Oh, Yes. [804]

Q. At the meal hours?

A. Both buildings—we don't have the same alleyway in mind. Just as you come in there was a guard stationed there, there was an open space with benches on both sides, and then into the plant, and then there was an alleyway. I am talking about the first place.

Mr. Esterman: Just inside the entrance?

The Witness: Yes.



(Testimony of Myrtice De Shazo.)

Q. (By Mr. Nourse) Just inside the guard place? A. Yes.

Q. You would go out there to eat lunch?

A. Yes. [805]

Q. Now, when you were off from the 18th of January to the 17th of— A. 15th.

Q. To the 15th of February, you didn't come back to the plant at all, you were home on your own business? A. Yes.

Q. Now, was your first activity for the A. F. of L. when you signed a card for them to—an authorization card, was that the first thing you did? A. The first thing I did?

Q. Yes. A. Yes.

Q. That was the first thing you did? [808]

A. Yes.

Q. And you didn't pass out any cards or have any other activities until you had authorized them as your representative, did you?

A. I don't understand exactly what you mean.

Q. You signed an authorization card?

A. Yes.

Q. You signified your intention and desire to join the A.F. of L., or for them to represent you, rather? A. Yes.

Q. Now, was it after that that you started your activity, you have testified to, for the A.F. of L.? A. Yes.

Q. Now, you returned on February 17th—  
Mr. Wilson: 15th.

Q. (By Mr. Nourse) The 15th, rather. What did you do after that, if anything?

(Testimony of Myrtice De Shazo.)

Mr. Esterman: With reference to what?

Q. (By Mr. Nourse) To any union activities.

A. Outside of talking, nothing.

Q. Then on how many days did you hand out cards?

A. I am not—I don't remember exactly the number of days; I would say it covered two days.

Q. What is it?

A. Two days would cover the time I gave the cards out. [809]

Q. May I call your attention that you didn't sign the card to the A.F. of L. until the 14th of January? A. Yes.

Q. I want to be sure I am right. That is right?

A. That is right.

Q. 14th of January? A. Yes.

Q. And then you weren't in the plant from the 15th of— A. (Interrupting) 18th.

Q. 18th. So it was only in those two days between the 14th and the 18th that you had any activity in passing out any cards?

A. Yes, sir. [810]

#### Redirect Examination

Q. (By Mr. Esterman) Do you remember your discussion with counsel about the E.M.A. meeting when you estimated about 150 people were there, and he asked you whether it occurred to you that the other 150 might be disobeying orders by not coming over? Do you remember that discussion?

A. Yes.

Q. Now that you have thought it over, does it

(Testimony of Myrtice De Shazo.)

occur to you that the other 150 might have been home in bed sleeping? A. It could have been.

Q. It sounds reasonable? [816]

A. Because that was the evening shift.

#### Recross Examination

Q. (By Mr. Nourse) This meeting was held right in between the two shifts, wasn't it?

A. 5:30 in the afternoon.

Q. You had a day shift, that is, the men that worked from 6:00 in the morning until 6:00 at night, didn't you?

A. I don't know. I don't know when they worked. There were men there, yes.

Q. And they had the night shift that went from 6:00 p.m. to 6:00 a.m., and your shift, that is, the one you were on, went from 2:30 to 11:00, is that right? A. Yes.

Q. So the only shift that could have been home sleeping was the shift you relieved, which was the first, called the first shift? The eight-hour shift that got off at 2:30, is that right?

A. That is right.

Q. There were about an equal number on that shift as there was on yours?

A. I think there was more on the day shift than on the evening shift.

Q. More? A. Yes. [817]

Q. Not many more?

A. I don't know. I wasn't, never was there during the day. [818]

(Testimony of Myrtice De Shazo.)

Q. (By Trial Examiner Schneider) What did Marjory Goebel do?

A. What do you mean, do?

Q. What was her job?

A. To keep us all working and keep us on the benches.

Q. Well now, when you came to work at 2:00 o'clock—that is the time you started?

A. 2:30.

Q. 2:30? A. 2:30.

Q. Well, what did you do first?

A. When we went in?

Q. Yes. A. Stamped the clock. [819]

Q. Then what?

A. Back to the department.

Q. And then?

A. And worked, started burring or whatever work we were appointed to do.

Q. At every time when you started to work, was there always work left over from the day before for you to take up and proceed with?

A. You mean from the day shift or from the work we had been doing?

Q. The work you had finished, that you had worked on the day before?

A. No, we carried on from the day crew, from what they were doing, onto the night work. [820]

Q. Were you always performing the same job when you worked on the burr bench?

A. No.

Q. How did you get from one job to another one?

(Testimony of Myrtice De Shazo.)

A. Margie would come and tell us, and we would walk over there.

Q. What would she say to you?

A. Just go to work at sanding machine, or go over and chase threads, whatever it was she wanted us to do.

Q. Did anyone else other than Marjorie ever tell you to make those changes? A. No.

Q. Did you ever work any place else in the plant other than on the burr bench?

A. In the plant?

Q. Yes.

A. I worked at the first or second machine, I don't know just which machine it was, on the drill press, for Mr. Nelson, when he came over to ask for a girl to help him.

Mr. Esterman: I can't hear what you are saying, and I don't think the Reporter can, either.

Trial Examiner Schneider: Read the answer, please.

(The last answer was read by the Reporter.)

Q. (By Trial Examiner Schneider) Mr. Nelson came over at least once? [821]

A. There was several times.

Q. And asked for girls, and were you assigned to help him? A. Yes.

Q. Who came to you and told you that you were to go to Mr. Nelson? A. Margie.

Q. What did she tell you, do you remember what she said? A. Go to Mr. Nelson.

(Testimony of Myrtice De Shazo.)

Q. And were you ever sent by Mr. Nelson, after you had worked for him, back to the burr bench?

A. When we would finish the job he would tell us to go back there, if that is what you mean.

Q. What did you do when you went back to the burr bench, what was the first thing you did after you got in the department?

A. Go to Margie and ask her what she wanted us to do.

Q. What would she do?

A. She would tell me where to go to work, on what bench, or sander, or wherever she wanted me to work.

Q. How long was Marjorie in that department while you were working there on the burr bench?

A. She was there when I started, and she was there when I left.

Q. Do you remember how you were introduced to her?

A. Yes, one of the guards took me back and said, "This is [822] Margie, and she will show you what to do."

Q. And then she assigned you to work?

A. Yes.

Q. Did you know of her ever telling anyone that she was discharged?      A. No.

Q. Did you ever hear her reprimand anyone?

A. No.

Q. Did you ever know her to hire anybody?

A. No.

Q. What did you consider her position to be in relation to your own?



(Testimony of Myrtice De Shazo.)

A. As forelady of the department.

Q. Did you consider her to be your superior?

A. Yes.

Q. Did you feel obligated to follow any instructions which she gave you?      A. Yes.

Q. Did you ever disobey any instruction which she gave you?      A. No.

Q. Did you ever ask for a raise while you were working there?

A. The head of the department, no. The head of the company.

Q. You never asked anyone there for a raise?

A. I asked Margie to turn in my name for a raise, and she [823] gave it to Mr. Foley, and it was put down in a little book.

Q. (By Trial Examiner Schneider) What happened to that request? Did you get a raise?

A. I never heard anything about it.

Mr. Esterman: What?

The Witness: I never heard anything about it.

Q. (By Trial Examiner Schneider) What did Marjorie say when you asked her to turn in your name? Do you remember?      A. No.

Mr. Nourse: What is the answer?

The Witness: No.

Mr. Nourse: She doesn't remember?

The Witness: I don't remember.

Q. (By Trial Examiner Schneider) Did you ever know of anybody to disobey any instructions that Marjorie gave?      A. No. [824]

Q. (By Mr. Nourse) The instructions that

(Testimony of Myrtice De Shazo.)

Marjorie gave you were what piece of material to work on, and if you didn't know how to do it, how to do it; is that right?      A. That's right.

Q. And that was the extent of her instruction except if someone else asked for you, she would say, "Well, Nelson wants you," or somebody else; isn't that it?      A. Yes.

Mr. Nourse: That is all.

Q. (By Mr. Esterman) She didn't give you any choice as to whether you were to go with Nelson or not, did she?      A. No. [825]

Q. You were hired in the personnel department, weren't you?      A. Yes.

Q. As far as you know, did you ever see or hear anyone being hired in any other place but the personnel department?      A. No.

Mr. Esterman: That is all.

Mr. Nourse: One question I want to ask.

Q. (By Mr. Nourse) You didn't ask for any choice, did you, as to where to go if Margie said, "Nelson wants you," or somebody wants you—you didn't ask for any choice?

A. At one time I asked to go with Mr. Nelson, and she wouldn't let me go, she told me to stay on the burr bench.

Q. She had work for you?      A. Yes.

Q. Now, Foley was the leadman on the burr bench in the day time, wasn't he?

A. I suppose you could call him leadman.

Q. In other words, he had the same job that Marjory had at night?      A. Yes. [826]

(Testimony of Myrtice De Shazo.)

Trial Examiner Schneider: Do you know how and by whom the girls were selected to go from the burr bench to other work in the plant?

The Witness: I understand that the person that wanted them asked for certain girls to go to work on the machines, or otherwise.

Trial Examiner Schneider: That is all.

Q. (By Mr. Nourse) You didn't understand who he asked first, or any procedure that came before you were requested to leave the bench and go any place else, you don't know what transpired before that, do you? A. Oh, no. [828]

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### LORETA SCHWERTFEGER,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

#### Direct Examination [850]

Q. Now, calling your attention to a time about August or September, 1942, was there any change in your status at that time? Do you understand my question? A. Yes.

Q. Was there any change in your status while you were in the inspection department?

A. Inspection department?

Q. Yes.

A. Well, I became more or less—helping the girls in the inspection department.

Mr. Esterman: I didn't hear it.

(The answer was read.)

(Testimony of Loreta Schwertfeger.)

Q. (By Mr. Esterman) Were you given a title? A. No.

Q. Were you made a lead girl?

A. Well, I don't know whether I would be a lead girl or not. I just, more or less, helped the girls get their gauges and their bueprints, and their jobs.

Q. Weren't you reclassified? Weren't you classified as a lead girl at that time?

A. I don't know. [852]

Q. You don't know? A. No.

Q. What were you classified as when you did this, that is, showed the girls what to do?

A. Well,—

Mr. Nourse: If she knows.

Mr. Esterman: I am sure she knows. I am trying to help her remember.

Mr. Nourse: You mean on the company records?

Mr. Esterman: In her mind.

Mr. Nourse: I will be very glad to look it up, if you want it and show you exactly what the company's records show.

Mr. Esterman: I want her to tell me.

The Witness: I don't know.

Q. (By Mr. Esterman) Didn't you think you were a lead girl in that department?

A. Well, I was just more or less helping out.

Q. Will you try and answer my question? I asked if you thought you were a lead girl?

A. I said I don't know.

(Testimony of Loreta Schwertfeger.)

Q. You don't know what you thought, is that it?

A. I was just working and helping the girls.

Q. Did you ever tell anybody that you were a lead girl in the inspection department?

A. Some of them asked me if I thought I was a lead girl, [853] and I said I didn't know whether I was classed as a lead girl or not.

Q. You don't know that? A. I don't.

Q. Did you ever try to find out?

A. Well, no.

Q. Do you know a girl Lucile Henritze?

A. Yes, I did.

Q. Did she work in the inspection department?

A. She did at the time I was there.

Q. What was her job?

A. She was helping me.

Q. Helping you? A. Yes.

Q. Was she your assistant?

A. More or less.

Q. Well, was she your assistant? A. Yes.

Q. She was your assistant. What were you supposed to be?

A. Well, she was working along with me, helping the girls, getting their gauges.

Q. When you speak of the girls, how many girls were there? I still can't hear you. You are not talking loud enough.

A. There were about 10 of us.

Q. In other words, there were you and Lucile and how many [854] other girls?

(Testimony of Loreta Schwertfeger.)

A. About 8 or 9.

Q. You and Lucile——

A. (Interrupting) We were inclusive.

Q. You were Lucille's superior? A. Yes.

Q. And was she the superior of the other girls?

A. Well, she worked along with me.

Q. Did she give instructions to the other girls?

A. She helped them.

Q. I asked you if she gave them instructions about their work. A. Yes.

Mr. Nourse: I don't think the witness has to answer in counsel's language, does she?

Mr. Esterman: If you can think of a simpler way, I will be glad to do it. It seems very simple to me.

Mr. Nourse: Excuse me.

Q. (By Mr. Esterman) That was on the 2:30 to 11:00 o'clock shift, wasn't it? A. Yes, sir.

Q. That is called the night shift? A. Yes.

Q. And did you change your shift afterward?

A. Did I change my shift, did you say? [855]

Q. Yes.

A. What do you mean?

Q. Well, did you go off that shift from 2:30 to 11:00 on to some other shift? That is what I mean. A. Yes, I did.

Q. What shift did you go to?

A. To the 6:00 to 2:30.

Q. 6:00 a.m. to 2:30 p.m.? A. Yes.

Q. What job did you have then?

A. The same.



(Testimony of Loreta Schwertfeger.)

Q. The same job? A. Yes.

Q. How many girls?

A. There were about 20.

Q. And did you have another girl with you, in the same capacity as Lucille? A. Yes.

Q. What was her name?

A. She and I worked together.

Q. What was her name?

A. Grace Deschamp. She did the same work I did.

Q. She worked and did the same thing as you did? A. She was acting the same as I.

Q. What were you acting as? [856]

A. Just working with the girls, the same as I was before.

Q. Didn't anybody ask you what your job was there, or its title?

A. Not that I remember.

Q. Nobody asked you what you did there?

A. Well, they noticed I worked in there with the girls, that is all I did do.

Q. You never told anybody you were a lead girl? A. No, I didn't.

Q. Did you belong to the E.M.A.?

A. Yes, I did.

Q. When did you join?

A. I don't recall what date it was, that I joined, soon after I started working at the company.

Q. Soon after you came with the company?

A. Yes.

(Testimony of Loreta Schwertfeger.)

Q. Did you attend meetings?

A. Occasionally, yes, I did.

Q. Did you collect dues for the E.M.A.?

A. I collected them.

Q. Do you know whether you collected any dues in January or February of this year?

A. Yes, I believe I did.

Q. Which one? A. January. [857]

Q. Did any of the girls in the inspection department, with which you were connected, ever ask you about the E.M.A., what it was?

A. Well, some of them did.

Q. What did you tell them?

A. I told them it was a union.

Q. You told them what?

A. I told them it was a union.

Q. Did you tell them anything else?

A. Well, they wanted to know what it was about, and I said, "Well, you will have to talk to the president."

Q. Talk up, because your voice is fading.

Mr. Nourse: I can't hear her. I haven't been able to for five minutes.

The Witness: I am sorry. They asked me what the E.M.A. was about, and I said they could talk to the president.

Q. (By Mr. Esterman) Of the E.M.A.?

A. Yes.

Q. Is that about what was said on the subject of the E.M.A. when they asked you about it?

A. Generally, yes, it was.

(Testimony of Loreta Schwertfeger.)

Q. That is about all of it? A. Yes.

Q. Did they ask you what kind of a union it was? [858] A. No.

Q. When you went to E.M.A. meetings, did the other girls in the inspection department go with you?

A. Well, on the night shift, yes, I think we did.

Q. On the night shift? A. Yes.

Q. Did they ask you whether they should go or what? How did they come to go, if you know?

A. Most all of them belonged, they joined, and they went.

Q. That is, on the night shift? A. Yes.

Q. They would go along with you?

A. We usually went in a group. [859]

Q. (By Mr. Esterman): And you would leave the inspection department about 5:30 in order to get to the meeting?

A. The meetings were held at 5:30.

Q. You would leave a little before that?

A. No; right at 5:30.

Q. Would you leave promptly at 5:30?

A. Yes.

Q. Did any of them ask you if they had to go to the meeting or not?

A. No, they never did ask me that question, no.

Q. They just went? A. Yes.

Q. You collect dues for the E.M.A.; that is, you stated that you did. Did you confine your collections to any particular time of the day? I mean,

(Testimony of Loreta Schwertfeger.)

did you collect during working hours or not during working hours, or when? What is your best recollection?

A. Sometimes it was during working hours, and sometimes it was rest period. [860]

Q. Getting back to the time when you were on the night shift, 2:30 to 11:00 p. m., and you had these eight or ten girls, are you able to say—and if you are not, please say so—what percentage of your time you spent in instructing or helping, or showing the girls what to do, as distinguished from the time you spent doing actual work yourself? Do you understand my question? A. Yes, I do.

Q. Are you able to make an estimate?

A. That would depend on the girl. If the girl was a new girl, I would spend some of my time with her. It would depend—

Q. That is, you would do the actual work?

A. Yes. But if they knew how to do their work, I was able to inspect also.

Q. That is what I am getting at. When you say you were able to inspect also, you consider that as doing the same work they were doing, inspecting?

A. Yes.

Q. When you weren't inspecting, you were showing someone [862] else how to do it? A. Yes.

Q. As between the two, do you have in mind any particular percentage of time that you spent on one or the other? That is what I am getting at.

A. I don't know that.

Q. Would you care to estimate it?

(Testimony of Loreta Schwertfeger.)

A. Well, that would be too hard to say.

Q. Did you spend more on one than on the other? Did you spend more time——

A. That would depend on the individual.

Trial Examiner Schneider: What was the answer to the preceding question?

(The record was read by the Reporter.)

Q. (By Mr. Esterman): The question probably isn't too clear. What I mean, Loreta, is this: Part of your day, the whole day, you spent showing girls what to do, instructing them and so on?

A. Yes.

Q. And part of the day you spent doing actual work yourself? That is a fair statement, isn't it?

A. Yes.

Q. Now, what I want to know is, tell me, if you can, what part of your day—not what part of the time on one girl—what part of the day, approximately, you spent on doing actual [863] inspection work, and what part you spent showing the other girls how to do it?

Mr. Nourse: Mr. Esterman, doesn't your question assume that one day was like another? Wouldn't it be well to find out if all the days were alike?

Mr. Esterman: I admit I am assuming that.

Mr. Nourse: Then probably the witness could answer you better.

Q. (By Mr. Esterman): You heard what counsel said. That is about right, there were days that were more or less alike?

(Testimony of Loreta Schwertfeger.)

A. Yes. You see, that depended on the individual, how well she would grasp instructions.

Q. That is, some days you would spend more time instructing than others?

A. Helping the girls, yes.

Q. All right. Do you have in mind any percentage of time that you spent instructing as against time that you spent inspecting? Have you ever thought about that?

A. Well, as I said before, that would depend upon the individual, how much time it took. Some days——

Q. I know that, you have told me that. Have you ever thought about that particular subject, how much time, what part of your day, any particular day, you spent inspecting and what time you spent instructing, have you thought about that? [864]

A. No. All I thought about was instructing and getting my work done.

Q. If that is all you thought about, all right, that is all you thought about.

Mr. Nourse: That has anything to do with this case.

Mr. Esterman: That is all.

#### Cross Examination

By Mr. Nourse:

Q. How big is this room that the inspection is done in, compared to the size of this one, just consider this all one room down here, how big is it?

A. It is about as long as from here to there (indicating).



(Testimony of Loreta Schwertfeger.)

Q. That is one way. And about twice that size the other, isn't it? A. Just about, I believe.

Q. What? A. Just about, I believe.

Q. And did you have tables that you sit—[865]

Trial Examiner Schneider: Excuse me. Now, about how big is that?

Mr. Nourse: I forgot about that.

Assuming my stride is about three feet, that would be about 24 feet one way. And as an approximation—we will have map of it in, but I want to bring something out—

Trial Examiner Schneider: 24 feet the narrow way, and about 48 the other?

Mr. Nourse: Yes, I assume. We will have a chart of it here that will be part of the record.

Q. (By Mr. Nourse): Now, there are tables in that room, aren't there? A. Yes.

Q. That the girls sit at when they do the inspecting work? A. Yes.

Q. Now, is there a foreman in that same room?

A. A foreman?

Q. Yes. A. Mr. Schumer.

Q. Schumer? A. Yes.

Q. He is right in that room where you are?

A. Yes.

Q. Now, tell the Examiner what you do with these girls. After you stopped being a common inspector and became some [866] other kind, tell him exactly what you did.

A. Well, I would show the girls how to inspect.

(Testimony of Loreta Schwertfeger.)

Q. Tell him what inspecting consists of. How do you inspect things there? He doesn't know. Would you look at them?

A. Getting certain jobs for the girls to do, getting their gauges and their blueprints, and showing them how to inspect this certain part, and I was helping them.

Q. If you are going to whisper and be confidential, I will come over there.

A. And if they didn't know how to inspect it, I would show them how to inspect this part; and if the girls knew how to do their work, go ahead and inspect their job, I would get jobs myself and inspect them. Any time they were out of work I would help them get another job and go through the same procedure.

Q. How big are these parts that you go through there? A. Different sizes.

Q. Now, each girl is brought a certain number, if they are small then she is brought a basket of parts, isn't she? A. Yes.

Q. And if they are large she is brought a certain number? A. Yes.

Q. They are given a gauge that fits onto that part? A. That's right.

Q. Or measures it? [867] A. Yes.

Q. And you show them how to measure it, is that right?

A. I show them how to inspect that part with the gauge.

(Testimony of Loreta Schwertfeger.)

Q. If you have a number of girls that are inexperienced it takes a larger part of your time to do that, is that right? A. Yes.

Q. If you have girls—tell me when I am wrong. If you have more girls that are experienced, then you get more time to do it yourself, is that right?

A. That's right.

Q. What do you do to see whether she is doing her work right or not? Do you do anything about that? A. I check with her.

Q. With each one of them? A. Yes.

Q. How do you check? Just tell me what you do about checking. This gentleman doesn't know about these things and we are trying to tell him.

A. I wanted to see if they were getting along with the instructions that I had given them how to inspect this part.

Q. Not what you wanted to see; how often do you go around to each girl and see if her work is being done right?

A. I try to go back—I wouldn't say the minutes exactly, but I would go back every once in a while to see how she is getting along. [868]

Q. Is that a new girl? A. Yes.

Q. I mean a girl who knows her work?

A. As long as I knew she was getting along all right, I could go ahead and inspect myself.

Q. Would you have any system of going around the benches to inspect parts that each girl is doing, or do you only go around and check on the parts of the inexperienced girls that you are not sure of?

(Testimony of Loreta Schwertfeger.)

A. I help them all out.

Q. What? A. I help all of them out.

Q. If they ask you? A. Yes.

Q. Do you have a regular routine of going around? A. No, not exactly.

Q. Who gets the gauges? Where do they get their gauges? A. I would get the gauges.

Q. What? A. I would get the gauges.

Q. And carry them from where—the tool room to the inspection department? A. Yes.

Q. And then you would put the kind of gauge that ought to go at each place, you would set that down? [869] A. Yes.

Q. And you would set the parts down?

A. Yes.

Q. And if the girl knew how and was experienced, she would start to work?

A. That's true.

Q. If she didn't know how, you would sit down and show her? A. I would help her.

Q. Until she seemed to know, then you would go on? A. Yes.

Q. If there was none of that work to do, you would go back to your portion of the bench and go to work? A. Yes.

Q. How many kinds of gauges do you work with?

Mr. Wilson: Don't ever list that. That would be as long as your arm and back.

Mr. Nourse: Withdraw that. I am exposing a lot of ignorance.

(Testimony of Loreta Schwertfeger.)

Q. (By Mr. Nourse): You have a lot of "go" and "no-go" gauges? A. Yes.

Q. And snap gauges? A. Yes.

Q. And others?

A. Red plug gauges. [870]

Q. And if the work requires a "go-no go" gauge, you have to show the girl, if she hasn't had experience, how to do that? A. Yes.

Q. With a snap gauge, you have to show her how to do that? A. Yes.

Q. If she worked with those, all you have to do is to give her the part and the gauge, is that it?

A. Yes. [871]

Trial Examiner Schneider: It may become important as to what date you began to do instructing. Could you make your best approximation as to the date on which you began to do that?

The Witness: No, I couldn't. The only thing I did was to help the girls, assist them in their work, and keep on doing my work, too. I couldn't give you any approximate date.

Mr. Nourse: This change was gradual, then, that you just kept taking on more?

The Witness: Yes. [876]

Mr. Nourse: I at this time review—I suppose for the fourth time, I haven't kept count—my motion to dismiss on the grounds heretofore stated that you are now proceeding in direct violation of public law 135 of 1943 which was formerly House Bill 2935 in that you are proceeding in a matter which affects a contract that has been in effect more than



(Testimony of Loreta Schwertfeger.)

three months prior to the filing of the complaint or charge in this matter. I think the very reading of that shows that it isn't a single contract, it is a contractual relationship that has been established and for the purpose of the war effort, [907] Congress does not want it disturbed and any expenditure of public money on this proceeding from now on is illegal.

Trial Examiner Schneider: I want to see if I understand your position correctly, Mr. Nourse. Am I correct in understanding that your motion is founded upon the hypothesis that the contract which is presently in existence between the E.M.A. and the company is more than 90 days old?

Mr. Nourse: My position is this: That that contract which is Board's Exhibit No. 12 taken in relationship with respondent's Exhibit No. 11, together with that portion of the contract which was dated in April of 1943, showed a continued contract relationship and a continuing contract between the E.M.A. and the respondent Gilfillan Brothers; and that they necessarily long antedated any charge in this matter.

Trial Examiner Schneider: That is to say that the existing contractual relationship was more than 90 days old at the time this complaint was filed?

Mr. Nourse: Yes. [908]



H. J. HOENES,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Schneider: Where do you reside?

The Witness: 8326 Croydon Avenue, Los Angeles, California.

Direct Examination

By Mr. Nourse:

Q. Where are you employed, Mr. Hoenes?

A. Now?

Q. Yes.

A. American Tool Products Company.

Q. Where about is that?

A. 727 East Gage Avenue.

Q. How long have you been employed there?

A. I joined that company about a month ago.

Q. Were you formerly employed by Gilfillan Brothers?      A. Yes, sir. [909]

Q. Between what dates?

A. I know I left Gilfillan on February 5, and I went with Gilfillan about six months.

Q. About six months?      A. Yes.

Q. In what capacity?

A. I was general foreman in the machine division.

Q. On what shift?      A. Swing shift. [910]

Q. Did you tell Mrs. Goebel, at that time, that she was to tell her girls to go to the meeting because you thought they had better go?

(Testimony of H. J. Hoenes.)

A. No, sir. I want to amplify that, though. On that meeting there I was busy in the shop, from morning to night, I assure you. And it was around about 5:30, if I remember right, all of a sudden a few machines stopped. Naturally, when the noise of the machines stopped there is usually something wrong, and immediately I inquired. A certain number of employees told me they were going to the union meeting. I says, "Oh, I didn't know there was one." And I didn't. So I says, "Well, if that is the case and you want to go, go ahead."

Shortly afterwards this lead lady came to me from the—she was lead lady on the burr bench, and she came to me and she asked me if the girls in the burr bench could go to the union meeting. I said, "Sure, go ahead." I had no objection. That is all that was said on that, as far as I know of.

Mr. Nourse: You may cross-examine.

### Cross Examination

By Mr. Esterman:

Q. What time did Mr. Nourse have in mind with reference to this testimony of Ella Richardson, do you know? [912]

A. It must have been the last meeting, because that is the only time I was asked whether they could go.

Q. You mean the last meeting with respect to your being there?

A. It must have been in January because I left February 5th.

(Testimony of H. J. Hoenes.)

Q. You think it must have been in January?

A. Either January—the latter part of January or the beginning of February. The exact date I couldn't give.

Q. You are not sure whether it was January or February?

A. It might have been either of them. It was the last union meeting they had.

Q. When Margaret Goebel spoke to you about employees going to the meetings, after the machines were turned down, did she say what union was meeting?

A. No. As a matter of fact, I don't give a darn whether it is one union or the other. [913]

Q. (Interrupting): Just a minute. You just said you didn't care which union they went to. Did you have in mind there might be another union meeting?

A. I really don't know which union was in command over there, or which union had a contract.

Q. Did you think there was more than one union there holding meetings?

A. No, I know that it was the employees union. I will be frank with you. And I also know that the American Federation of Labor had some pamphlets out there and I didn't know which one was meeting there or which one they were going to.

Q. Why do you call the E.M.A. an employees' union? [914] Do you mean by that you wouldn't think the A. F. of L. was an employees' union?

A. Absolutely.

(Testimony of H. J. Hoenes.)

Q. Absolutely what?

A. That the A. F. of L. is an employees' union.

Q. (By Mr. Esterman): Had there been some similar situations prior to that when the machines were turned off at 5:30 of an afternoon, and people went to a meeting, to your knowledge? Had there been similar situations? A. Yes. [915]

Q. And how many times?

A. Oh, no more than five or six times, to my knowledge.

Q. Did you, in those instances, make the same inquiry as to why the power was being turned off at 5:30? A. Yes.

Q. And what did you learn?

A. That they went to a union meeting.

Q. Did you learn what union? A. No.

Q. And you never inquired? A. No. [916]

Q. Well, at the time of this union meeting, you say that some of the machines were shut off?

A. Yes. [928]

Q. In order that the employees might attend the meeting? A. Yes.

Q. At what time of the day was that?

A. About 5:30.

Q. Did some of the employees then leave?

A. Yes.

Q. On which shift were those employees working?

A. They were on my shift, on the swing shift as far as turret lathes are concerned.

(Testimony of H. J. Hoenes.)

Q. At what time should they normally have quit?      A. At six.

Q. Then they quit to go to the meeting a half hour early?      A. Yes.

Q. Did you make any objection to that?

A. No.

Q. Were you informed beforehand that some of the employees would leave to go to the meeting?

A. No, I wasn't.

Q. They simply shut down their machine?

A. Yes.

Q. Without advance notice to you?

A. Well, there might have been a notice on the bulletin board, but I didn't pay any attention to it. I was too busy.

Q. In any event, no one came to you and said, we want to go to a union meeting and we want to shut down the machine. [929] They merely shut down the machine and you found out about it afterwards?      A. That's right.

Q. And you made no objection?      A. No.

Q. You said there were other meetings with similar occurrences?      A. That's right.

Q. Did you make any objection at those times?

A. No.

Q. Then your first information, to your best recollection, that something was happening was when you noticed the machines being shut down?

A. That's right.

Q. And then what did you do?

A. I asked why the machines were shut down.

(Testimony of H. J. Hoenes.)

They told me they were going to a union meeting, and I said all right.

Q. Whom did you ask, do you remember?

A. Several of the employees. Some of them on the turret lathes; some on the automatics; some of them on the drill press, and shortly afterwards, the leadlady there on the burr bench, she came to me and she asked me whether her girls can go to the union meeting, and I told her yes, and that is all.

Mr. Esterman: I didn't hear that. [930]

Q. (By Trial Examiner Schneider): Was that before or after you noticed the machines being shut down? A. After the machines.

Q. Was it before or after you asked some of the employees why the machines were being shut down, if you recall?

A. Machines were shut down first and then I asked the employees why the machine was shut down, suspecting tool trouble, and then they told me they were going to a union meeting, and I told them, "O.K."

Q. And it was after that that you saw the forelady on the burr bench?

A. The leadlady, she came over there and she said, can she go to the union meeting or her girls can go to the union meeting, and I said, go to it.

Q. Was that Mrs. Goebel?

A. Yes, she was on the afternoon shift from 2:30 to 11.



(Testimony of H. J. Hoenes.)

Recross Examination

By Mr. Esterman:

Q. Ella Richardson, at the time you left, was on what shift? A. I don't know. [931]

Q. What work did she do? At the time you left?

A. She was switched around there a couple of times. She was on the Hardings, on the burr bench, at times she was on the drill presses. I think I switched her around on the Harding.

Q. Do you recall what she was doing when you left? What work she was on?

A. I believe she was on the Harding.

Q. Aren't you sure?

A. I handled so many people I really couldn't tell you.

Q. Now, when she worked on the Hardings, she was under your supervision, was she not?

A. Yes.

Q. Didn't you ever talk to her when she was under your supervision?

A. Very, very little. I asked her how is the job going? I stopped and looked and checked part of her work and I kept on going.

Q. I asked you before if you had any conversations with her, and you said no.

Mr. Nourse: You asked him relative to the E.M.A.

Mr. Esterman: I beg your pardon.

The Witness: Then, I misunderstood your question.

Mr. Nourse: I certainly did, too.

(Testimony of H. J. Hoenes.)

The Witness: I had conversations in that respect with each and every one of the employees. In regard to their work [932] I asked questions. I want to correct that by all means. I talked to every one of the employees day in and day out.

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IRVIN W. SPARKS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Schneider: Where do you reside?

The Witness: 1215 Hill Drive, Los Angeles.

Direct Examination

By Mr. Nourse:

Q. What is your position, Mr. Sparks?

A. Vice-president of Gilfillan Bros. Inc. [933]

Q. Now, have you any other duties, other than as vice-president? I mean operational duties?

A. I am in charge of the machine shop and the hydraulic department.

Q. At what address?

A. 1815 Venice Boulevard.

Q. And that is the machine shop that the Examiner viewed the other night?

A. That is correct.

Q. Can you give the dimensions of that machine shop?

Mr. Nourse: I will state I promised to produce a map of it. I find, on examining the directions

(Testimony of Irvin W. Sparks.)

from the government, as to divulging information, I cannot do that, but I think I can give the rough dimensions of the room you were in.

Trial Examiner Schneider: All right.

The Witness: They are approximately 95 by 175.

Q. (By Mr. Nourse): That is the whole building? A. Yes.

Q. At the south end there is partitioned off by wire, where the inspectors, persons doing the inspection of parts are? A. Yes.

Q. And the tool crib?

Trial Examiner Schneider: May I interrupt? By the whole [934] building, you are referring to the building which houses the machine shop and the hydraulics?

Mr. Nourse: No, the hydraulics are not in that department.

The Witness: They are not in that building.

Mr. Nourse: They are not in that building.

Trial Examiner Schneider: You are referring to the building then which houses the machine shop?

Mr. Nourse: Yes. I am describing the parts that are not in the machine shop.

Trial Examiner Schneider: Proceed.

Q. (By Mr. Nourse): At the south end of that building there is the toolcrib, and the place where the persons sit who inspect the parts?

A. Yes.

Q. And two offices which are partitioned off with glass partitions above—partitioned off with

(Testimony of Irvin W. Sparks.)

wood up to about three and a half feet, and glass up to the ceiling?

A. That is correct.

Q. One of those offices is yours and one is used by other persons?

A. That is correct.

Mr. Nourse: I think I paced this off the other night when you were there.

Q. (By Mr. Nourse): About 30 feet in depth north and south? [935]

A. Correct.

Q. And the long dimensions of the building is north and south?

A. Right.

Q. There are also some racks along the east wall and outside of the offices I described, but approximately the southeast corner on which bar material is stored, bar stock is stored, which is used on the machines?

A. Correct.

Q. Are there any partitions, other than those I have described, or is it all one open room?

A. There are two other offices in there, one belongs to the Navy inspection department, and the other to Douglas inspection department.

Q. Where are they situated and what are their dimensions?

A. Directly north of the office partitioned, leaving about a five to a six-foot aisle.

Trial Examiner Schneider: To the east wall.

The Witness: That is on the east wall.

Q. (By Mr. Nourse): And the rest of the room where the machine shop and the machine operations have been described, in the testimony here, are——

A. In the open.

Q. ——open? A. Yes. [936]

(Testimony of Irvin W. Sparks.)

Q. And the hydraulic department is where?

A. In the east building, the building directly immediately east of the machine shop.

Q. And as to area, now, there are many other departments in that east building, are there not?

A. There are.

Q. As to area, how does it compare with the machine shop building that you have described?

A. I think I am permitted to say there it is larger.

Q. It is larger?           A. Yes.

Q. In that there are not only other operation departments—what are those operation departments? Just generally, without saying what they do.

A. One portion of the building there is the hydraulic department. The balance of the building is engaged in a secret project. I think I had better refrain from saying any more.

Q. Then you have another building down the street that also is engaged in some operations?

A. A building west of us, which we rent.

Q. But the executive offices and the bookkeeping and the auditing are all down along the south side?

A. Of the main building.

Q. What you have described as the east and main building? [937]           A. Correct.

Trial Examiner Schneider: That is a separate building from the one which houses the machine shop.

The Witness: Correct.



(Testimony of Irvin W. Sparks.)

Q. (By Mr. Nourse): Now, will you describe what lay-out and set-up work consists of?

A. Yes, lay-out——

Q. (Interrupting): In the machine shop operation.

A. The machine shop, I assumed you meant that question to apply to. In the first place, you have to determine what tools are necessary to produce the parts. There may be some that have to be made, and it is necessary to draw a sketch of those tools and turn them over to a toolmaker, in some instances. Others are standard tools that may be purchased from suppliers. After these tools have been accumulated, then it is necessary to set them up. They may be set up in the automatic, the turret lathes, the mills and the drill presses. They have to go into their proper position, in the turrets, on the arbor if it happens to be mills, or in the chucks, if it happens to be drill presses. They have to be properly sharpened before they go in, otherwise the parts will not come out properly.

Q. The same thing as to automatic screws?

A. That applies to both the automatic screw machines and the turret lathes. It also applies to the drill presses, [938] in so far as the tools you use in those, which are mainly taps, reamers, drills on the mills. It is only milling cutters, they may be high speed, they may be fly cutters in which you use carboly steels, rather than high speed steel for cutting. There again there may be one and there may



(Testimony of Irvin W. Sparks.)

be five or six cutters, depending entirely on the piece you are making.

Q. Now, in your plant, do you divide your machines into any classes?      A. Yes, we do.

Q. What are they?

A. Automatic screw machines,—

Q. (Interrupting): I mean as to—do you call some of them basic?      A. That is correct.

Q. I mean in the plant.

A. We do. We consider the automatic screw machines, the turret lathes and the mills as basic machines.

Q. Now, in setting up, under your operations there, who sets up an automatic screw or a turret lathe?

A. The leadman, or if we have a competent workman.

Q. Well, who plans what tools are to be used, makes the layout from the diagram?

A. Mostly the superintendent or the foreman of the shift.

Q. Now, on the drill presses and those that you have not [939] listed as basic machines, who makes the set-ups and layouts?      A. The leadmen.

Q. In all cases?

A. Not in all cases. If we are fortunate enough to hire an experienced drill pressman and he proves himself to be such, we will allow him to do that.

Q. You spoke of leadmen. Just describe what the duties of the leadmen are.

Mr. Esterman: Can't we have it more specifically, with reference to some—

(Testimony of Irvin W. Sparks.)

Mr. Nourse: All right.

Q. (By Mr. Nourse): Describe the duties of a leadman on your basic machines.

Mr. Esterman: I would prefer it that way.

Mr. Nourse: Yes. I strive to please.

The Witness: His duties are to get the tools, set them up in the machines, and if he doesn't have competent men he can turn it over to—and after that is done, see that the parts are properly made. In fact, actually check them as they come out of the machine or off the cut-off, and after that is done and that machine is running properly, or even during the time he is setting it up, if a green man happens to be having trouble it is his duty to go and help him get it straightened up. After that it is his duty to see as many, if not all of those machines, during his working [940] time, and check the parts to see they are to the blueprint and within the tolerances specified on the prints.

Q. Take on your turret lathe, does the leadman have actual charge of the operations of any machines, or automatic screw machines? I mean does he actually operate them.

A. He operates two machines himself.

Q. As well as doing the other work you spoke of?

A. That is correct.

Q. How many automatic screws are there?

A. There are fourteen.

Q. And on your turret lathes, does he, the leadman, have any machine which he himself operates, other than to get it set up and get it going?

(Testimony of Irvin W. Sparks.)

A. If he doesn't have all of his men there, and he can get a chance, he is supposed to do some work.

Q. He is supposed to do some work if he has time?

A. If he has a full crew he is supposed to continually go through each machine and check the work. If there is trouble, he is supposed to straighten it out.

Q. What are the other basic machines? I forget.

A. Turret lathes and mills.

Q. On the mills, what does the lead man do?

A. Sets them up, sees they are properly set up, sees that the work is absolutely coming out within the tolerances of the blueprints. [941]

Q. Does he operate any machines?

A. If he has time and there is a machine idle, due to absenteeism, he is supposed to operate it.

Q. Now, on your drill presses.

A. The leadman there has to set up the conditions—which, in about 90 per cent of the cases, he has to sharpen all the tools when they become dull, because he doesn't have sufficient experienced help.

Q. Now, your Hardinge lathes, what department are they in?

A. They come under the leadman on the turrets.

Q. On the turrets? A. Yes.

Q. Describe a Hardinge lathe, as to what operation it does, and its size, to the big turret lathes, and things of that kind.

(Testimony of Irvin W. Sparks.)

A. In principle it is practically the same thing. In size it is very much smaller.

Q. Do you use it as you would a drill press at times?

A. It depends entirely on the class of work going through the shop. We might use it a vertical drill press.

Q. Vertical?

A. Horizontal drill press, rather. And very often do, which the little hexagon turret has probably one tool, maybe two, and they are drills.

Q. Now, on the burr bench, is there any layout or set-up to [942] do? A. Absolutely none.

Q. What are the duties of a lead woman or man in there?

A. In that department most of our employees come in as absolutely green employees. She instructs them how to remove the sharp edges and the burrs off of the parts, after the parts have been machined. In some cases they may be completely machined and in other only partially machined.

Q. How much was your plant expanded after the fire in 1940, and when you became, went over to a hundred per cent defense work? How much was your plant expanded in the machine shop?

A. I believe that we had about five automatics more than we had prior to the fire. [943]

Q. How many drill presses?

A. I am trying to think. If my memory serves me correctly, we had seven turret lathes at the time of the fire, which was in November of 1940.

(Testimony of Irvin W. Sparks.)

Q. How many do you have now?

A. Including the Hardinges, which I believe, is fourteen. We had two mills at the time of the fire. We now have ten—I will take that back. We had four mills, including two hand mills. We now have ten.

Q. Ten power?

A. We have five power machines, four hand mills and one hydraulically-driven table mill.

Q. How many drill presses?

A. We had approximately twenty drill spindles before the fire, and we have, I believe, forty-three today.

Q. You expanded the machine shop just about double after the fire, to what it was before?

A. Approximately.

Q. Now, then, before you took on any defense or war contracts, government contracts, what was the business of Gilfillan Brothers?

A. Manufacture of radios and electric refrigerators.

Q. In that work, did you operate a machine shop?      A. Yes, sir.

Q. And did you have leadmen then? [944]

A. No, sir.

Q. Now, do you now have, besides leadmen, a foreman on each shift?      A. Correct.

Q. In the machine shop?      A. Yes, sir.

Q. Is there also a general superintendent?

A. There is one.

Q. Who is that?      A. Chester Cramer.



(Testimony of Irvin W. Sparks.)

Q. And under him there is a foreman on each shift?

A. Foreman on each shift; the day, the night and the swing.

Q. What are the duties of the foreman?

A. The duties of the foremen are to see that the work is properly done on the machines. If anybody is having trouble and the leadman happens to be busy or if he doesn't know, it is up to the foreman to straighten them out and see that the work is done properly, and to meet the tolerances of the blueprints.

Q. Does he stay at one place in the machine shop, except when called on, or what does he do?

A. He moves continually around the machine shop, picks up work at every machine in the shop, probably has his own micrometer and scales and things like that. If not, he [945] gets the other necessary precision tools from the operators, to check the work and see it is coming through right.

Q. What is the reason you now have leadmen and you have had? When did you first put them in?

A. I think it was along towards the middle of 1941, or fall of 1941, we started to increase our personnel and put in leadmen.

Q. What is and was the reason for leadmen?

A. Because our ability to hire experienced operators has been diminishing as the war effort kept going. In other words, we are getting greener and greener help all the time.



(Testimony of Irvin W. Sparks.)

Date	No. Hrs.	Description of Work	
Jan. 2	5½	Burr—Sand (501.A)	
		(501-B)	
2	2½	File—Burr—Stamp	Bench
4	3	Burr—Sand	“
4	3	Ream—Burr—Stamp	“
4	1	Chase threads—Sand—Burr—	
		Bench	
5	3¼	Sanding (504 )	
		(501-A)	
5	2¼	Ream—Stamp	Bench
5	2	Ream—Burr—Ch. Th.	“
6	2	Sand (504 )	
		(501-A)	
7	2½	“ 504	
7	4	Burr—Chs. threads	Bench
7	1½	Stamp	“
8	2½	Sand (501-A)	
		(504 )	
8	2	Stamp	Bench
8	½	Clean threads	“
8	1	Chase threads	“
8	1	Buffing	“
9	2	Sanding (501-A)	
		(504 )	
9	3	Stamp, paint & Pack	Bench
Feb. 9, 1943	5	Stamp	“
9	2	Ream	“
9	1	Burr	“
10	5½	Stamp	“
10	½	Burr	“
10	2	Ream	“
11	5½	Stamp	“
11	2½	Sand	“
12	6	Stamp	“
12	1	Burr	“
12	1	Sand	“
13	2½	Burr	“
13	4	Supervising	
13	1½	Stamp & chs. threads	“
15	8	Supervising	

(Testimony of Irvin W. Sparks.)

Date	No. Hrs.	Description of Work	
Feb. 16	5	Stamping	Bench
16	3	Burring	"
17	8	Burr & Stamp	"
18	2¾	Sand (504 )	
		(501-A)	
18	1¾	Stamp	Bench
18	2½	Burr—ream	"
18	1	Chase threads	"
19	8	Stamp	Bench
20	5½	Sand—ream—burr—	
		stamp	"
22	7	Burr—stamp—chase	"

Overtime Jan. & Feb.—23 hrs Included above in hrs.

Laid off Feb. 22, 1943.

Q. (By Mr. Nourse) I will show you these sheets, which I will ask to be marked as Respondent's Exhibit 14-A through S.

(Thereupon, the documents referred to were marked as Respondent's Exhibit Nos. 14-A through S, for identification.) [972]

Trial Examiner Schneider: Very well. They may be admitted as Respondent's Exhibits 14-A through S.

(Thereupon, the documents heretofore marked for identification as Board's Exhibits Nos. 14-A through S, were received in evidence.) [975]



A

Name GOEBEL, MARGA Account No. 140-03-2836

Address 2228 $\frac{3}{4}$  W. 15th .87—5- 1-43

Date of Birth 9-11-02 Dependents .85—4-23-43

Place of Birth N.J. tionality .80—1-10-43

Date Employed 9-15-42 \$ .73

1. 1. 1.

2. 2. 2.

3. 3. 3.

4. 4. 4.

5. 5. 5.

6. 6. 6.

7. 7. 7.

8. 8. 8.

9. 9. 9.

10. 10. 10.

11. 11. 11.

12. 12. 12.

13. 13. 13.

14. 14. 14.

## RESPONDENT'S EXHIBIT No. 14-A

## EMPLOYEE'S EARNINGS RECORD

A

Name GOEBEL, MARGARET THERESA Employee No. 192 S. S. Account No. 140-03-2836  
 Address 2228 3/4 W. 15th Phone 87-5- 143  
 Date of Birth 9-11-02 Male Female X Single Married X No. of Dependents 85-4-23-43  
 Place of Birth N.J. Date Becomes 65 Age Nationality 80-1-10-43  
 Date Employed 9-15-42 Rate \$ .53  
 Type of Work ~~House~~ Nights Rate Change \$ 85-2-21-43  
 4107-1 Insp. 10% 82-2-28-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	P.O.A.B.	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	14.60	.15	.15	1.46	.10	12.74	1 Jan 2 1943
			47	36.87	.37	.37	3.69	1.30	31.14	2 Jan 9 1943
			48	41.60	.42	.42	4.16	1.60	35.00	3 Jan 16 1943
			48	41.60	.42	.42	4.16	1.60	35.00	4 Jan 23 1943
			48	41.60	.42	.42	4.16	1.60	35.00	5 Jan 30 1943
			47 1/2	41.00	.41	.41	4.10	1.60	34.48	6 Feb 6 1943
			40	32.00	.32	.32	3.20	.90	27.26	7 Feb 13 1943
			40	32.00	.32	.32	3.20	.90	27.26	8 Feb 20 1943
			40	34.00	.34	.34	3.40	1.10	28.82	9 Feb 27 1943
			48 ✓	42.64	.43	.43	4.26	1.60	35.92✓	10 Mar 6 1943
			46 ✓	40.18	.40	.40	4.02	1.60	33.76✓	11 Mar 13 1943
			48 ✓	42.64	.43	.43	4.26	1.60	35.92✓	12 Mar 20 1943
			48 ✓	42.64	.43	.43	4.26	1.60	35.92✓	13 Mar 27 1943
			48 ✓	42.64	.43	.43	4.26	1.60	35.92✓	14 Apr 3 1943
			46 ✓	40.18	.40	.40	4.02	1.60	33.76✓	15 Apr 10 1943
			48 ✓	42.64	.43	.43	4.26	1.60	35.92✓	16 Apr 17 1943
2nd Bond Drive 2.00 extra per wk. until 37.50			46 ✓	41.65	.42	.42	6.17	1.60	33.04✓	17 Apr 24 1943
			48	44.20	.44	.44	6.42	1.60	35.30	18 May 1 1943
			48	44.20	.44	.44	6.42	1.60	35.30	19 May 8 1943
Retro. to 5-1			48	44.20	.44	.44	4.42	1.60	37.30	20 May 15 1943
2.32 02 02 12 2.16			48	45.24	.45	.45	6.52	1.60	36.22	21 May 22 1943
			47.6	44.71	.45	.45	4.47	1.60	37.74	22 May 29 1943
			40	34.80	.35	.35	3.43	1.10	29.52	23 Jun 5 1943
			44	40.02	.40	.40	4.00	1.60	33.62	24 Jun 12 1943
			44	40.02	.40	.40	4.00	1.60	33.62	25 Jun 19 1943
			48	45.24	.45	.45	4.52	1.60	38.22	26 Jun 27 1943

Average Weekly Hrs.	No. Weeks Worked	
17.10	483 37	1st Quarter
552 06		2nd "
		3rd "
		4th "
		Totals

In case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avg. Weekly Wage		
Relationship	Full-Time Weekly Hours		
	Hourly Rate Earned		
	Unemploy. Ins.		
	Tax Deducted		
	Fed. Old-Age Tax Deducted		
	Number Quarters Worked		

WEEKLY AVERAGE HOURS WORKED  
 1942 1943 1944





RESPONDENT'S EXHIBIT No. 14-B

EMPLOYEE'S EARNINGS RECORD

A

Name LLOREDA, LUZ GUTERREZ

Employee No. 193

S. S. Account No. 568-20-7688

Address 1238 Magnolia

Phone DR - 3485

Date of Birth 1-7-07

Male

Female X

Single

Married X

No. of Dependents 78-4-48-43

Place of Birth Kan.

Date Becomes 65

Age

Nationality

Rate \$ 60

Date Employed 9-29-42

Rate Change \$ 75-2-28-43

Type of Work Burr 2nd. shift

4116-1

10%

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	12.00	.12	.12	.00	.00	11.76	1 Jan 2 1943
			48	31.20	.31	.31	1.00	.90	28.68	2 Jan 9 1943
			48	39.00	.39	.39	1.00	1.30	35.92	3 Jan 16 1943
			48	40.56	.41	.41	1.00	1.60	37.14	4 Jan 23 1943
			48	40.56	.41	.41	3.75	1.60	34.39	5 Jan 30 1943
			48	41.60	.42	.42	1.00	1.60	38.16	6 Feb 6 1943
			48	40.56	.41	.41	1.00	1.60	37.14	7 Feb 13 1943
			48	40.56	.41	.41	4.06	1.60	34.08	8 Feb 20 1943
			48	40.56	.41	.41	4.06	1.60	34.08	9 Feb 27 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	10 Mar 6 1943
			40 ✓	30.00	.30	.30	3.00	.90	25.50✓	11 Mar 13 1943
			47½✓	38.44	.38	.38	3.84	1.30	32.54✓	12 Mar 20 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	13 Mar 27 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	14 Apr 3 1943
			44 ✓	34.50	.35	.35	3.45	1.10	29.25✓	15 Apr 10 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	16 Apr 17 1943
										17
										18
										19
										20
										21
										22
										23
										24
										25
										26

Paid off

	Average Weekly Hrs.	No. Weeks Worked	
	16.60	473 04	1st Quarter
		112 50	2nd "
			3rd "
			4th "
			Totals

In Case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avge. Weekly Wage		
Relationship	Full-Time		
	Weekly Hours		
	Hourly		
	Rate Earned		
	Unemploy. Ins.		
	Tax Deducted		
	Fed. Old-Age		
	Tax Deducted		
	Number Quarters Worked		
	WEEKLY AVERAGE HOURS WORKED		
	1942 1943 1944		



(Testimony of Irvin W. Sparks.)

## RESPONDENT'S EXHIBIT No. 14-C

## EMPLOYEE'S EARNINGS RECORD

A

Name TUTTLE, LOTTIE ELIZA Employee No. 246 S. S. Account No. 554-12-5732  
 Address 1017-S. Bonnie Brae Phone FI-1829  
 Date of Birth 9-29-87 Male Female X Single X Married No. of Dependents  
 Place of Birth N.Y. Date Becomes 65 Age Nationality .78-5-1-43  
 Date Employed 9-30-42 Rate \$.58—  
 Type of Work Burr, ~~2nd shift~~ Days Rate Change \$.78-4-10-43  
 4116-1 10% .75-2-28-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	Deductions F.O.A.B Bond	V-Tax	Net Amount	Period Ending
			16	11.60	.12	.12 1.16	.00	10.20	1 Jan 2 1943
			47	29.29	.29	.29 2.93	.90	24.88	2 Jan 9 1943
			48	40.56	.41	.41 4.06	1.60	34.08	3 Jan 16 1943
			48	40.56	.41	.41 4.06	1.60	34.08	4 Jan 23 1943
			48	40.56	.41	.41 4.06	1.60	34.08	5 Jan 30 1943
			47	39.39	.39	.39 3.94	1.30	33.37	6 Feb 6 1943
			48	40.56	.41	.41 4.06	1.60	34.08	7 Feb 13 1943
			40	31.20	.31	.31 3.12	.90	26.56	8 Feb 20 1943
			24	18.72	.19	.19 1.87	.30	16.17	9 Feb 27 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	10 Mar 6 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	11 Mar 13 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	12 Mar 20 1943
			40 ✓	30.00	.30	.30 3.00	.90	25.50✓	13 Mar 27 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	14 Apr 3 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	15 Apr 10 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	16 Apr 17 1943
			48 ✓	39.00	.39	.39 3.90	1.30	33.02✓	17 Apr 24 1943
			48	39.00	.39	.39 3.90	1.30	33.02	18 May 1 1943
			48	39.00	.39	.39 3.90	1.30	33.02	19 May 8 1943
1.92	02	02	10	178	48	40.56	.41	4.06 1.60	20 May 15 1943
			48	40.56	.41	.41 4.06	1.60	34.08	21 May 22 1943
			40	31.20	.31	.31 3.12	.90	26.56	22 May 29 1943
			48	43.68	.44	.44 4.37	1.60	36.83	23 Jun 5 1943
			40	31.20	.31	.31 3.12	.90	26.56	24 Jun 12 1943
			48	40.56	.41	.41 4.06	1.60	34.08	25 Jun 19 1943
			44	35.88	.36	.36 3.59	1.10	30.47	26 Jun 27 1943

Average Weekly Hrs.	No. Weeks Worked	
14.60	439 44	1st Quarter
499 56		2nd "
		3rd "
		4th "
		Totals

## In case of Accident Notify

(If M. I.)  
 Name  
 Address  
 Phone  
 Relationship

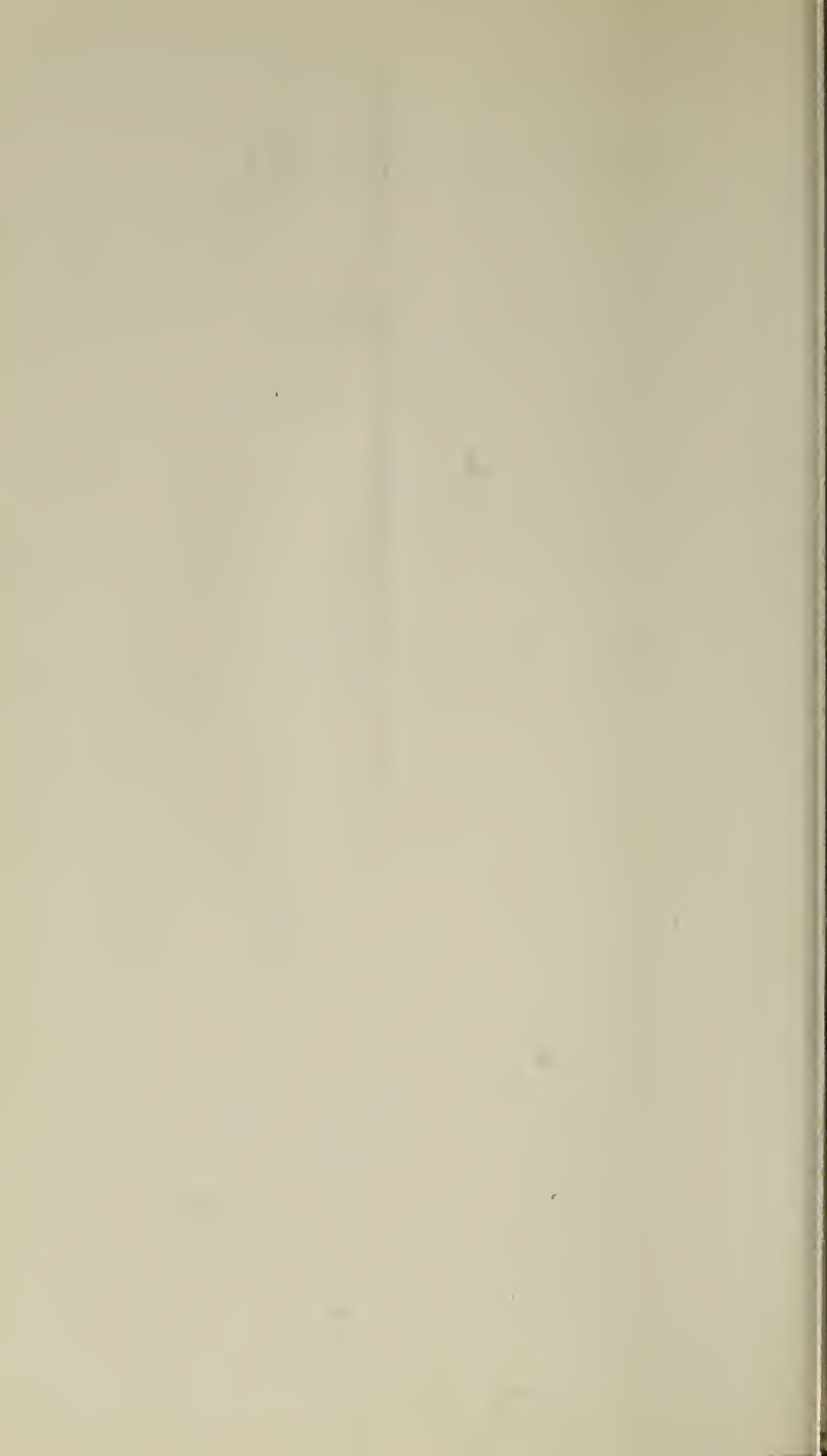
## Summary Current Yr. Prior Years

Total Earnings  
 No. of Weeks  
 Worked  
 Avge. Weekly  
 Wage  
 Full-Time  
 Weekly Hours  
 Hourly  
 Rate Earned

Unemploy. Ins.  
 Tax Deducted  
 Fed. Old-Age  
 Tax Deducted

WEEKLY AVERAGE HOURS WORKED  
 1942 1943 1944

Number  
 Quarters  
 Worked



## RESPONDENT'S EXHIBIT No. 14-D

## EMPLOYEE'S EARNINGS RECORD

A

Name SANDERS, JUNE OLIVIA Employee No. 240 S. S. Account No. 547-30-3936  
 Address Phone RI-9038  
 Date of Birth 8-28-91 Male Female X Single X Married No. of Dependents 80-5-1-43  
 Place of Birth Neb. Date Becomes 65 Age Nationality 75-2-28-43  
 Date Employed 10-27-42 Rate \$ .53

Type of Work Buff  
~~Evening 2nd shift~~  
 4116-1 1st Days Rate Change \$ .73-1-40-43  
 10% .78-1-31-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending		
			16	10.60	.11	.11	1.06	.00	9.32	1 Jan 2 1943		
			45	25.18	.25	.25	2.52	.70	21.46	2 Jan 9 1943		
			48	37.96	.38	.38	3.80	1.30	32.10	3 Jan 16 1943		
			48	37.96	.38	.38	3.80	1.30	32.10	4 Jan 23 1943		
			48	37.96	.38	.38	3.80	1.30	32.10	5 Jan 30 1943		
			47	39.39	.39	.39	3.94	1.30	33.37	6 Feb 6 1943		
			48	40.56	.41	.41	4.06	1.60	34.08	7 Feb 13 1943		
			40	31.20	.31	.31	3.12	.90	26.56	8 Feb 20 1943		
			48	40.56	.41	.41	4.06	1.60	34.08	9 Feb 27 1943		
			46 ✓	36.75	.37	.37	3.68	1.30	31.03✓	10 Mar 6 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	11 Mar 13 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	12 Mar 20 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	13 Mar 27 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	14 Apr 3 1943		
			44 ✓	34.50	.35	.35	3.45	1.10	29.25✓	15 Apr 10 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	16 Apr 17 1943		
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	17 Apr 24 1943		
			32	24.00	.24	.24	2.40	.50	20.62	18 May 1 1943		
			24	18.00	.18	.18	1.80	.30	15.54	19 May 8 1943		
1.20	01	01	06	1.12	48	41.60	.42	.42	4.16	1.60	35.00	20 May 15 1943
			47	40.40	.40	.40	4.04	1.60	33.96	21 May 22 1943		
			48	41.60	.42	.42	4.16	1.60	35.00	22 May 29 1943		
			47	43.60	.44	.44	4.36	1.60	36.76	23 Jun 5 1943		
			48	41.60	.42	.42	4.16	1.60	35.00	24 Jun 12 1943		
			48	41.60	.42	.42	4.16	1.60	35.00	25 Jun 19 1943		
			40	32.00	.32	.32	3.20	.90	27.26	26 Jun 27 1943		

Average Weekly Hrs.	No. Weeks Worked	
15.20	455 12	1st Quarter
477 10		2nd "
		3rd "
		4th "
		Totals

In case of Accident Notify

Name

Address

Phone

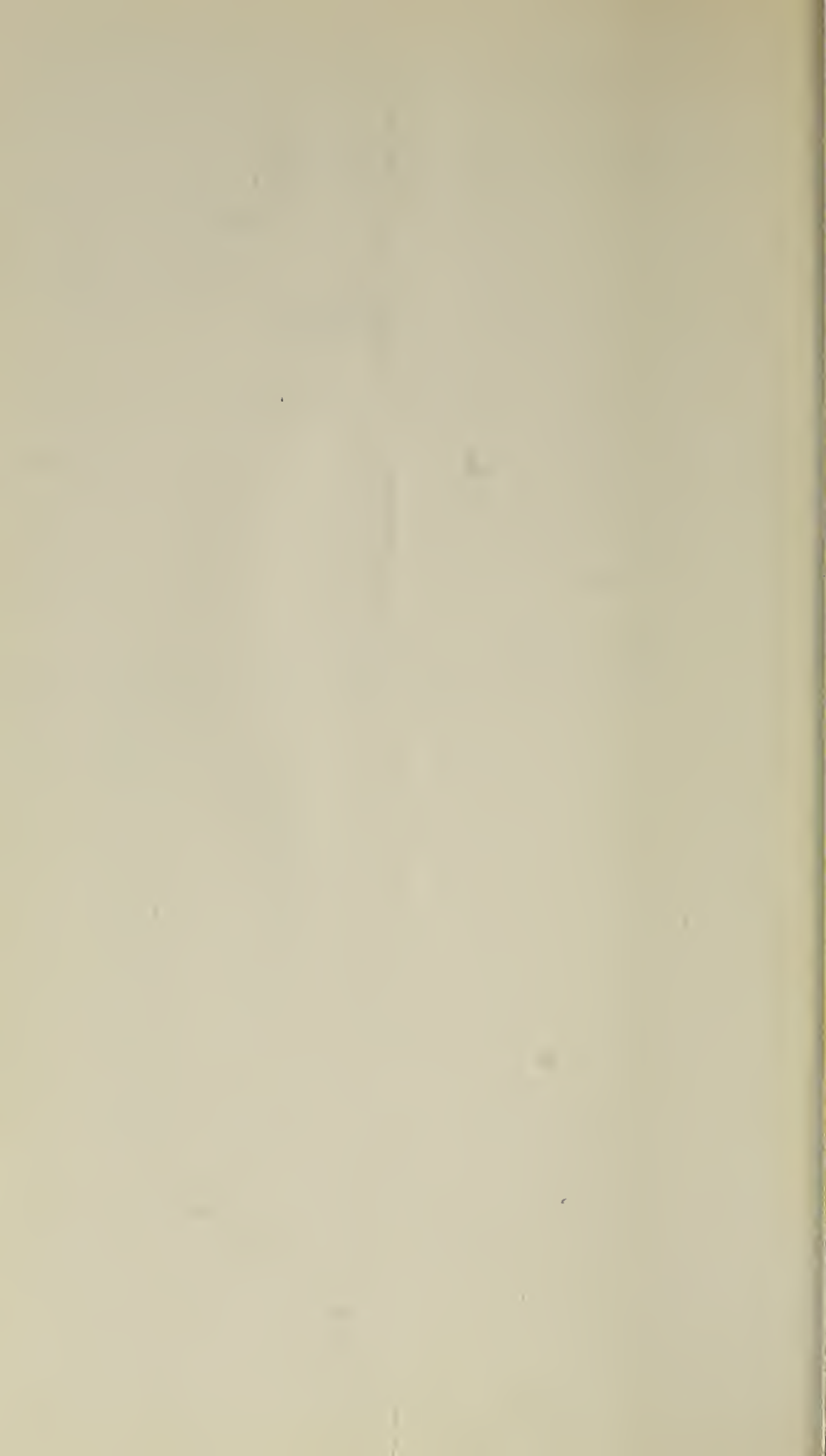
Relationship

Summary	Current Yr.	Prior Years
Total Earnings		
No. of Weeks		
Worked		
Avg. Weekly		
Wage		
Full-Time		
Weekly Hours		
Hourly		
Rate Earned		
Unemploy. Ins.		
Tax Deducted		
Fed. Old-Age		
Tax Deducted		

WEEKLY AVERAGE HOURS WORKED  
 1942 1943 1944

Number  
 Quarters  
 Worked





## RESPONDENT'S EXHIBIT No. 14-E

## EMPLOYEE'S EARNINGS RECORD

A

Name SAMANIEGO, RAFAELA Employee No. 210 S. S. Account No. 550-28-5243  
 Address 2015 Corinth, W. L. A. Phone  
 Date of Birth 9-20-20 Male Female X Single X Married No. of Dependents 78-1-26-43  
 Place of Birth Cal. Date Becom's 65 Age Nationality 68-1-10-43  
 Date Employed 10-27-42 Rate \$ 58  
 Type of Work Burr 1st Rate Change \$ .75-3- 7-43

3901-1

10%

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending
			16	11.60	.12	.12	1.16	.00	10.20	1 Jan 2 1943
			16	9.28	.09	.09	.93	.00	8.17	2 Jan 9 1943
			48	35.36	.35	.35	3.54	1.10	30.02	3 Jan 16 1943
			40	27.20	.27	.27	2.72	.70	23.24	4 Jan 23 1943
			48	48.72	.49	.49	4.87	1.60	41.27	5 Jan 30 1943
			47	39.39	.39	.39	3.94	1.30	33.37	6 Feb 6 1943
			24	18.72	.19	.19	1.87	.30	16.17	7 Feb 13 1943
			45	37.05	.37	.37	3.71	1.30	31.30	8 Feb 20 1943
			48	40.56	.41	.41	4.06	1.60	34.08	9 Feb 27 1943
			39 3/4 ✓	31.01	.31	.31	3.10	.90	26.39 ✓	10 Mar 6 1943
			20 ✓	15.00	.15	.15	1.50	.10	13.10 ✓	11 Mar 13 1943
adj. 2 checks			{ 12.6 ✓	9.45	.09	.09	.00	.00	{ 9.27 }	12 Mar 20 1943
			{ 20 ✓	15.00	.15	.15	.00	.10	{ 14.60 }	13 Mar 20 1943
										14
										15
										16
										17
										18
										19
										20
										21
										22
										23
										24
										25
										26

Two checks 3/20/43

Average Weekly Hrs.	No. Weeks Worked
338 34	1st Quarter
	2nd "
	3rd "
	4th "
	Totals

## In Case of Accident Notify

Name  
 Address  
 Phone  
 Relationship

Summary	Current Yr.	Prior Years
Total Earnings		
No. of Weeks Worked		
Avge. Weekly Wage		
Full-Time Weekly Hours		
Hourly Rate Earned		
Unemploy. Ins.		
Tax Deducted		
Fed. Old-Age		
Tax Deducted		

WEEKLY AVERAGE HOURS WORKED  
 1942 1943 1944

Number  
 Quarters  
 Worked



## RESPONDENT'S EXHIBIT No. 14-F

## EMPLOYEE'S EARNINGS RECORD

A

Name GRAY, ALMEDA LENORA Employee No. 244 S. S. Account No. 517-24-6116  
 Address 2138 S. La Salle Phone PA-5176  
 Date of Birth 2-10-89 Male Female X Single Married X No. of Dependents .80-5- 1-43  
 Place of Birth Kan. Date Becomes 65 Age Nationality .75-2-28-43  
 Date Employed 10-28-42 Rate \$ .58  
 Type of Work ~~Day~~ Nights Rate Change \$ 73-1-40-43  
 4116-1 Insp. 10% 78-1-21-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending
			16	11.60	.12	.12	1.16	.00	10.20	1 Jan 2 1943
			47	29.29	.29	.29	2.93	.90	24.88	2 Jan 9 1943
			48	37.96	.38	.38	3.80	1.30	32.10	3 Jan 16 1943
			48	37.96	.38	.38	3.80	1.30	32.10	4 Jan 23 1943
			48	37.96	.38	.38	3.80	1.30	32.10	5 Jan 30 1943
			47	39.39	.39	.39	3.94	1.30	33.37	6 Feb 6 1943
			48	40.56	.41	.41	4.06	1.60	34.08	7 Feb 13 1943
			48	40.56	.41	.41	4.06	1.60	34.08	8 Feb 20 1943
			48	40.56	.41	.41	4.06	1.60	34.08	9 Feb 27 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	10 Mar 6 1943
			39 ✓	29.25	.29	.29	2.93	.90	24.84✓	11 Mar 13 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	12 Mar 20 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	13 Mar 27 1943
			00 ✓	.00	.00	.00	.00	.00	.00	14 Apr 3 1943
			28 ✓	21.00	.21	.21	2.10	.50	17.98✓	15 Apr 10 1943
			48 ✓	39.00	.39	.39	3.90	1.30	33.02✓	16 Apr 17 1943
			48 ✓	39.00	.39	.39	8.90	1.30	28.02✓	17 Apr 24 1943
2nd Bond Drive \$5.00 per wk. extra to 37.50			48	39.00	.39	.39	8.90	1.30	28.02	18 May 1 1943
			48	39.00	.39	.39	8.90	1.30	28.02	19 May 8 1943
3.20 .03 .03 .16 2.98			48	41.60	.42	.42	9.16	1.60	30.00	20 May 15 1943
			48	41.60	.42	.42	9.16	1.60	30.00	21 May 22 1943
			47.6	41.12	.41	.41	9.11	1.60	29.59	22 May 29 1943
			16	16.00	.16	.16	1.60	.10	13.98	23 Jun 5 1943
				.00			.00		.00	24 Jun 12 1943
				.00			.00		.00	25 Jun 19 1943
				.00			.00		.00	26 Jun 27 1943

Average Weekly Hrs.	No. Weeks Worked	
15.70	462 09	1st Quarter
320 52		2nd "
		3rd "
		4th "
		Totals

Summary Current Yr. Prior Years

Total Earnings  
 No. of Weeks  
 Worked  
 Avge. Weekly  
 Wage  
 Full-Time  
 Weekly Hours  
 Hourly  
 Rate Earned

Unemploy. Ins.  
 Tax Deducted  
 Fed. Old-Age  
 Tax Deducted

Number  
 Quarters  
 Worked

WEEKLY AVERAGE HOURS WORKED  
 1942 1943 1944



## RESPONDENT'S EXHIBIT No. 14-G

## EMPLOYEE'S EARNINGS RECORD

A

Name DAVIDSON, GRACE HANNAH Employee No. 257 S. S. Account No. 562-16-0615  
 Address Phone  
 Date of Birth 8-19-90 Male Female X Single Married X No. of Dependents  
 Place of Birth England Date Becomes 65 Age Nationality .80—5. 1-43  
 Date Employed 10-28-42 Rate \$ .68  
 Type of Work ~~Base~~ Buff Days Rate Change \$ .74 — 4-10-43  
 4116-1 4.69 .75 — 2-28-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending
			16	11.60	.12	.12	.00	.00	11.36	1 Jan 2 1943
			31	17.98	.18	.18	4.69	.30	12.63	2 Jan 9 1943
			48	40.56	.41	.41	4.69	1.60	33.45	3 Jan 16 1943
			48	40.56	.41	.41	4.69	1.60	33.45	4 Jan 23 1943
			48	40.56	.41	.41	4.68	1.60	33.46	5 Jan 30 1943
			47	39.39	.39	.39	4.69	1.30	32.62	6 Feb 6 1943
			48	40.56	.41	.41	4.68	1.60	33.46	7 Feb 13 1943
			48	40.56	.41	.41	4.69	1.60	33.45	8 Feb 20 1943
			48	40.56	.41	.41	4.69	1.60	33.45	9 Feb 27 1943
			45½ ✓	36.19	.36	.36	4.69	1.30	29.48 ✓	10 Mar 6 1943
			40 ✓	30.00	.30	.30	4.68	.90	23.82 ✓	11 Mar 13 1943
			48 ✓	39.00	.39	.39	4.69	1.30	32.23 ✓	12 Mar 20 1943
			24 ✓	18.00	.18	.18	4.69	.30	12.65 ✓	13 Mar 27 1943
			48 ✓	39.00	.39	.39	4.69	1.30	32.23 ✓	14 Apr 3 1943
			48 ✓	39.00	.39	.39	4.68	1.30	32.24 ✓	15 Apr 10 1943
			48 ✓	39.00	.39	.39	4.69	1.30	32.23 ✓	16 Apr 17 1943
			00 ✓	.00	.00	.00	.00	.00	.00	17 Apr 24 1943
			00	.00	.00	.00	.00	.00	.00	18 May 1 1943
			48	39.00	.39	.39	4.69	1.30	32.23	19 May 8 1943
2.60	.03	.03	.13	2.41	48	41.60	.42	.42	4.69	1.60 34.47 20 May 15 1943
			47	40.40	.40	.40	4.68	1.60	33.32	21 May 22 1943
			48	41.60	.42	.42	4.69	1.60	34.47	22 May 29 1943
			48	44.80	.45	.45	4.69	1.60	37.61	23 Jun 5 1943
			46	39.20	.39	.39	4.69	1.30	32.43	24 Jun 12 1943
			48	41.60	.42	.42	4.69	1.60	34.47	25 Jun 19 1943
			48	41.60	.42	.42	4.69	1.60	34.47	26 Jun 27 1943

Average  
Weekly Hrs.No. Weeks  
Worked

15.00 435 52 1st Quarter

449 40 2nd "

3rd "

4th "

Totals

In Case of Accident Notify

Name  
 Address  
 Phone  
 Relationship

Summary Current Yr Prior Years

Total Earnings

No. of Weeks

Worked

Avg. Weekly

Wage

Full-Time

Weekly Hours

Hourly

Rate Earned

Unemploy. Ins.

Tax Deducted

Fed. Old-Age

Tax Deducted

Number

Quarters

Worked

WEEKLY AVERAGE HOURS WORKED

1942 1943 1944





## RESPONDENT'S EXHIBIT No. 14-H

## EMPLOYEE'S EARNINGS RECORD

A

Name JONES, EDNA EARL Employee No. 173 S. S. Account No. 566-26-9749

Address Phone

Date of Birth 11-9-82 Male Female X Single X Married No. of Dependents

Place of Birth Tenn. Date Becomes 65 Age Nationality 73-1-10-43

Date Employed 11-6-42 Rate \$ .53

Type of Work Burr, 2nd. shift Rate Change \$ .78-1-31-43

3901-1 1.00

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I	F.O.A.B	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	10.60	.11	.11	.00	.00	10.38	1 Jan 2 1943
			36	19.08	.19	.19	1.00	.30	17.40	2 Jan 9 1943
			32	23.36	.23	.23	1.00	.50	21.40	3 Jan 16 1943
			48	37.96	.38	.38	1.00	1.30	34.90	4 Jan 23 1943
			48	37.96	.38	.38	1.00	1.30	34.90	5 Jan 30 1943
			47 1/2	39.98	.40	.40	1.00	1.30	36.88	6 Feb 6 1943
			48	40.56	.41	.41	1.00	1.60	37.14	7 Feb 13 1943
			48	40.56	.41	.41	1.00	1.60	37.14	8 Feb 20 1943
			8	6.24	.06	.06	.00	.00	6.12	9 Feb 27 1943

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Average  
Weekly Hrs.

No. Weeks  
Worked

7.90 256 30 1st Quarter

2nd "

3rd "

4th "

Totals

In case of Accident Notify

Name

Address

Phone

Relationship

Summary Current Yr. Prior Years

Total Earnings

No. of Weeks

Worked

Avg. Weekly

Wage

Full-Time

Weekly Hours

Hourly

Rate Earned

Unemploy. Ins.

Tax Deducted

Fed. Old-Age

Tax Deducted

Number

Quarters

Worked

WEEKLY AVERAGE HOURS WORKED

1942 1943 1944



RESPONDENT'S EXHIBIT No. 14-I

EMPLOYEE'S EARNINGS RECORD

A

Name MIX, DAISY

Address

Date of Birth 10-5-05

Place of Birth Ill.

Date Employed 11-9-42

Type of Work Burr

Employee No. 255

Male

Female X

Single

Married X

Date Becomes 65

Age

3901-1

10%

S. S. Account No. 546-24-7066

No. of Dependents

Nationality

Rate \$ .53

Rate Change \$ .73-1-10-43

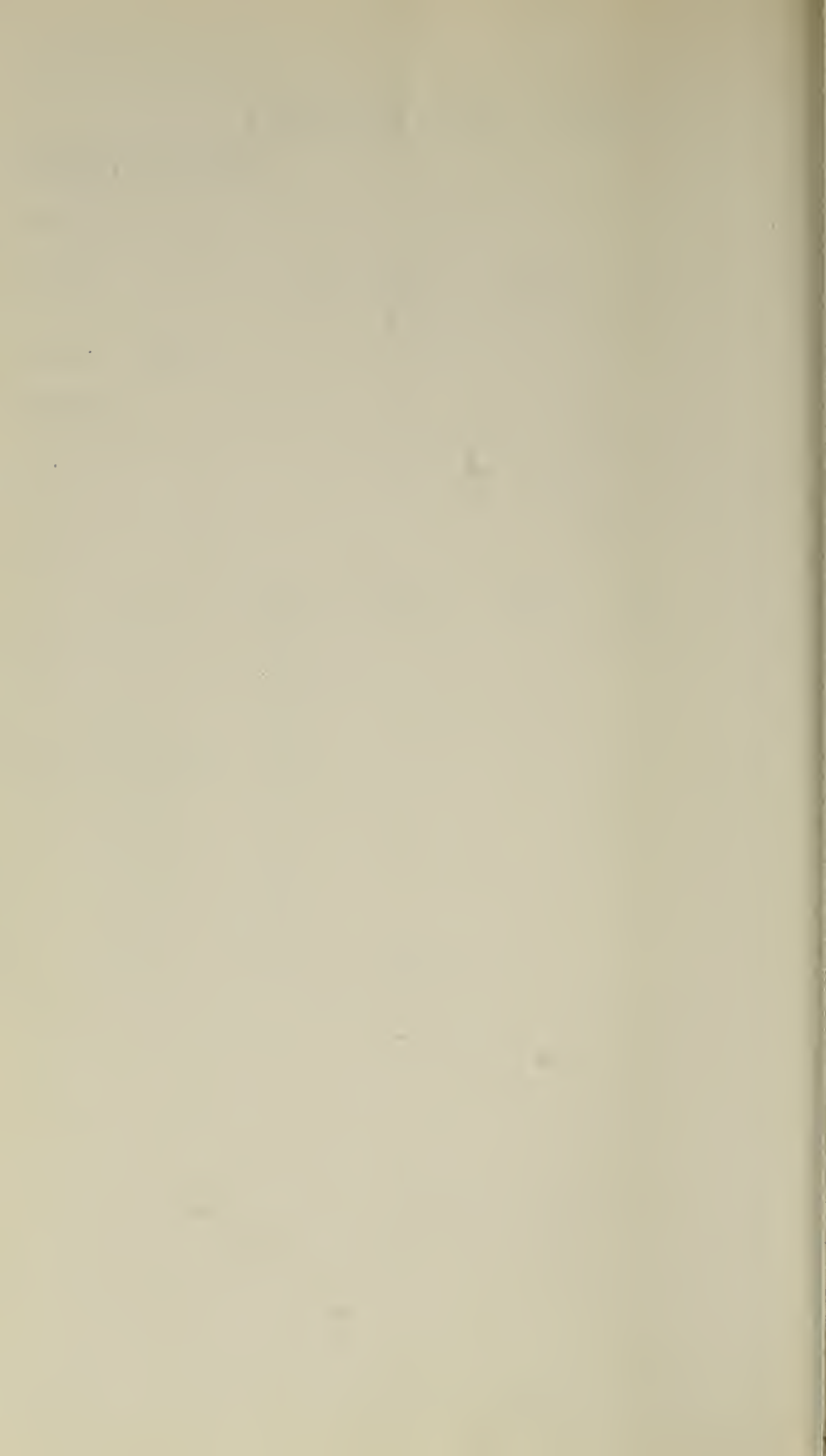
.78-2-14-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I	Deductions			Net Amount	Period Ending		
			16	10.60	.11	.11	1.06	.00	9.32	1	Jan	2 1943
			47	26.77	.27	.27	2.68	.70	22.85	2	Jan	9 1943
			48	37.96	.38	.38	3.80	1.30	32.10	3	Jan	16 1943
			48	37.96	.38	.38	3.80	1.30	32.10	4	Jan	23 1943
			48	37.96	.38	.38	3.80	1.30	32.10	5	Jan	30 1943
			47	36.87	.37	.37	3.69	1.30	31.14	6	Feb	6 1943
			48	37.96	.38	.38	3.80	1.30	32.10	7	Feb	13 1943
			48	40.56	.41	.41	.20	1.60	37.94	8	Feb	20 1943
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										26		

		Average Weekly Hrs.	No. Weeks Worked
		272	88
		1st Quarter	
		2nd "	
		3rd "	
		4th "	
		Totals	

In Case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avge. Weekly Wage		
Relationship	Full-Time Weekly Hours		
	Hourly Rate Earned		
	Unemploy. Ins. Tax Deducted		
	Fed. Old-Age Tax Deducted		

WEEKLY AVERAGE HOURS WORKED			Number Quarters Worked
1942	1943	1944	



RESPONDENT'S EXHIBIT No. 14-J

EMPLOYEE'S EARNINGS RECORD

A

NameTAYLOR, ALICE REBECCA

Address

Date of Birth5-10-94

Place of BirthKans.

Date Employed11-9-42

Type of WorkBurr

3901-J

Employee No. 243

Male

FemaleX

Date Becomes65

Single

MarriedX

Age

10%

S. S. Account No. 551-03-6382

No. of Dependents

Nationality.78-2-14-43

Rate\$ .53

Rate Change\$ .62-1-10-43

.73

Total Hours Worked	Total Wages Earned	Average Weekly	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending			
			16	10.60	.11	.11	1.06	.00	9.32	1	Jan	2	1943
			48	27.56	.28	.28	2.76	.70	23.54	2	Jan	9	1943
			40	27.20	.27	.27	2.72	.70	23.24	3	Jan	16	1943
			40	31.20	.31	.31	3.12	.90	26.56	4	Jan	23	1943
			48	37.96	.38	.38	3.80	1.30	32.10	5	Jan	30	1943
			48	37.96	.38	.38	3.80	1.30	32.10	6	Feb	6	1943
			48	37.96	.38	.38	3.80	1.30	32.10	7	Feb	13	1943
			48	40.56	.41	.41	.20	1.60	37.94	8	Feb	20	1943
			8	6.24	.06	.06	.00	.00	6.12	9	2-27-43		

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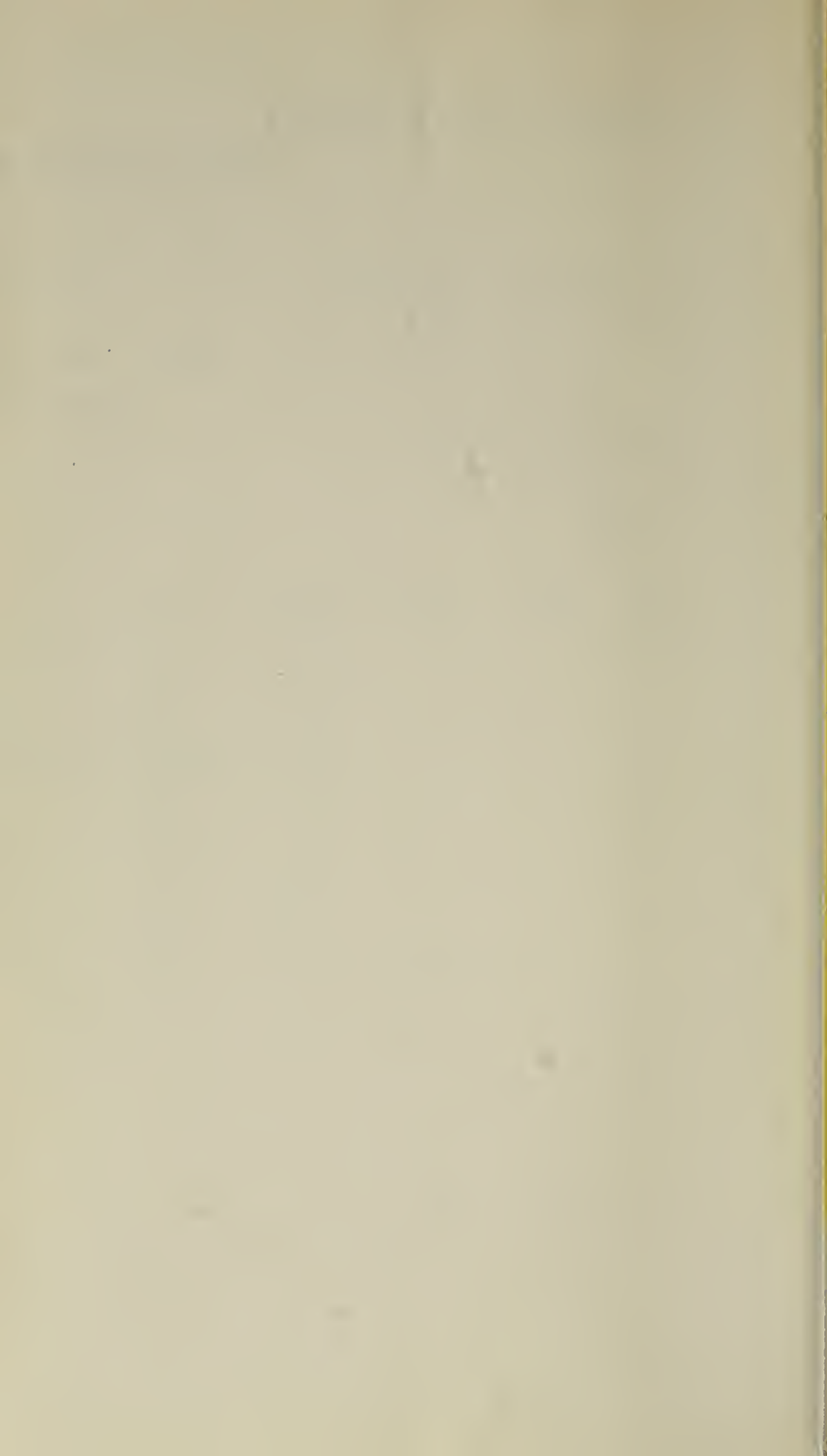
Average Weekly Hrs.				No. Weeks Worked
7.80	257	24	1st Quarter	
			2nd "	
			3rd "	
			4th "	
			Totals	

In Case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avg. Weekly Wage		
Relationship	Full-Time		
	Weekly Hours		
	Hourly		
	Rate Earned		
	Unemploy. Ins.		
	Tax Deducted		
	Fed. Old-Age		
	Tax Deducted		

WEEKLY AVERAGE HOURS WORKED  
1942      1943      1944

Number  
Quarters  
Worked





RESPONDENT'S EXHIBIT No. 14-K

EMPLOYEE'S EARNINGS RECORD

A

Name LONG, ELOISA Employee No. 302 S. S. Account No. 570-24-5895  
Address Phone  
Date of Birth 4-3-95 Male Female X Single Married X No. of Dependents  
Place of Birth N. M. Date Becomes 65 Age Nationality  
Date Employed 11-11-42 Rate \$ .53  
Type of Work Burr, 2nd. shift Rate Change \$ .73—1-10-43  
3901-1 10% .78—2-14-43

Total Hours Worked	Total Wages Earned	Average Weekly	Hour	Hours Worked	Amount Earned	S.U.L.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending
				00	.00	.00	.00	.00	.00	.00	1 Jan 2 1943
				47	26.77	.27	.27	2.68	.70	22.85	2 Jan 9 1943
				48	37.96	.38	.38	3.80	1.30	32.10	3 Jan 16 1943
				48	37.96	.38	.38	3.80	1.30	32.10	4 Jan 23 1943
				48	37.96	.38	.38	3.80	1.30	32.10	5 Jan 30 1943
				48	37.96	.38	.38	3.80	1.30	32.10	6 Feb 6 1943
				48	37.96	.38	.38	3.80	1.30	32.10	7 Feb 13 1943
				48	40.56	.41	.41	.00	1.60	38.14	8 Feb 20 1943
8	6.24					.06	.06	.00	.00	6.12	9 2-27-43

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21  
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23  
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Average Weekly Hrs.	No. Weeks Worked	
263	37	1st Quarter
		2nd "
		3rd "
		4th "
		Totals

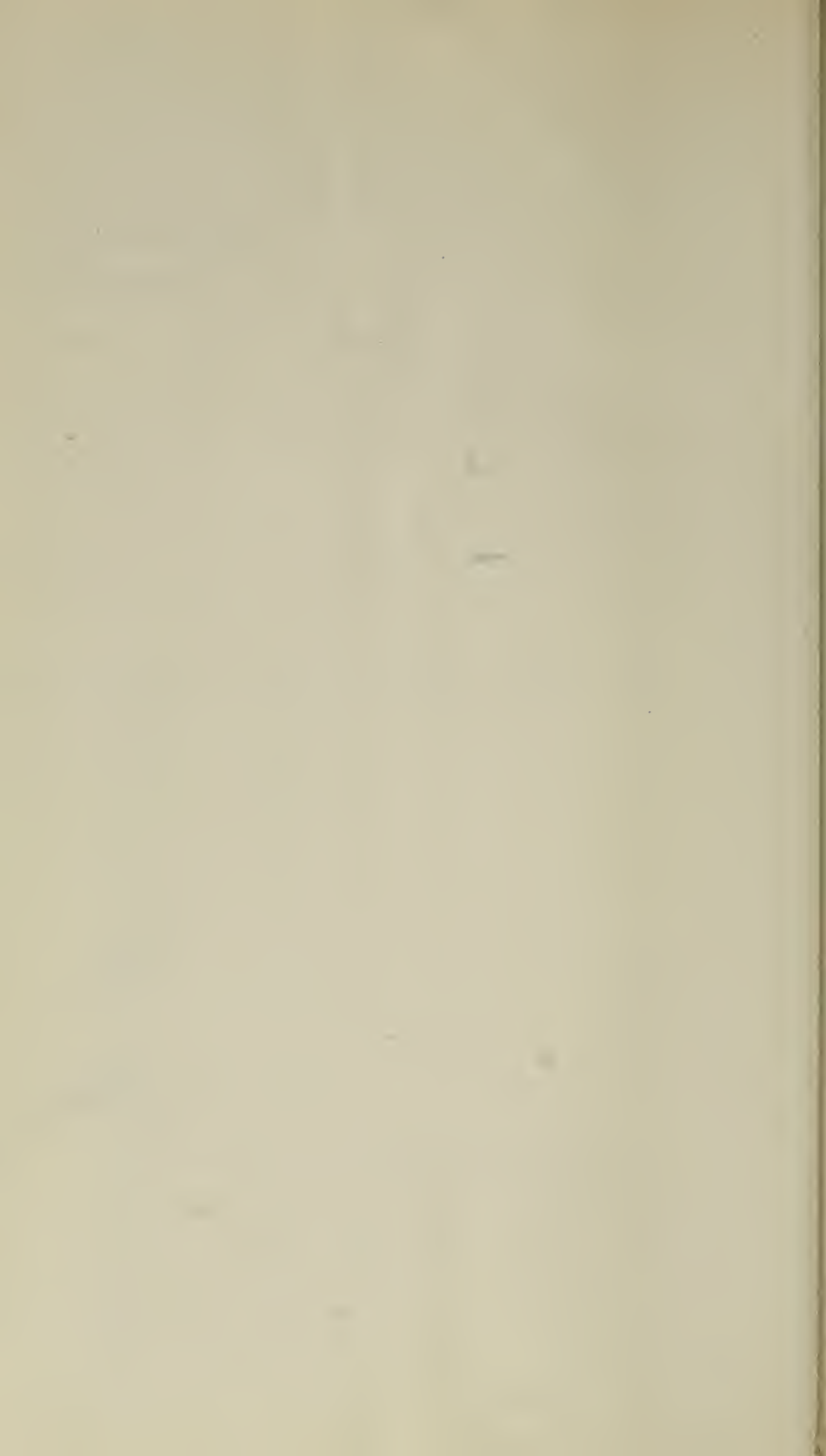
In Case of Accident Notify

Name  
Address  
Phone  
Relationship

Summary Current Yr. Prior Years  
Total Earnings  
No. of Weeks  
Worked  
Avg. Weekly  
Wage  
Full-Time  
Weekly Hours  
Hourly  
Rate Earned  
  
Unemploy. Ins.  
Tax Deducted  
Fed. Old-Age  
Tax Deducted

WEEKLY AVERAGE HOURS WORKED  
1942 1943 1944

Number  
Quarters  
Worked



## RESPONDENT'S EXHIBIT No. 14-L

## EMPLOYEE'S EARNINGS RECORD

A

Name ELSENIUS, MARY BARBARA

Employee No. 184

S. S. Account No. 564-18-0498

Address

Phone

Date of Birth 3-10-90

Male

Female X

Single X

Married

No. of Dependents .78—2-14-43

Place of Birth Ill

Date Becomes 65

Age

Nationality .73—1-10-43

Date Employed 11-16-42

Rate \$ .63

Type of Work Burr, 2nd. shift

Rate Change \$

3901-1

10%

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I	F.O.A.B.	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	10.60	.11	.11	1.06	.00	9.32	1 Jan 2 1943
			47	26.77	.27	.27	2.68	.70	22.85	2 Jan 9 1943
			48	37.96	.38	.38	3.80	1.30	32.10	3 Jan 16 1943
			48	37.96	.38	.38	3.80	1.30	32.10	4 Jan 23 1943
			48	37.96	.38	.38	3.80	1.30	32.10	5 Jan 30 1943
			48	37.96	.38	.38	3.80	1.30	32.10	6 Feb 6 1943
			48	37.96	.38	.38	3.80	1.30	32.10	7 Feb 13 1943
			48	40.56	.41	.41	3.80	1.60	34.34	8 Feb 20 1943
			8	6.24	.06	.06	.00	.00	6.12	9 2/27/43

10

11

12

13

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15

16

17

18

19

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21

22

23

24

25

26

Average  
Weekly Hrs.No. Weeks  
Worked

8.80 273 97 1st Quarter

2nd "

3rd "

4th "

Totals

In Case of Accident Notify

Name

Address

Phone

Relationship

Summary Current Yr. Prior Years

Total Earnings

No. of Weeks

Worked

Avg. Weekly

Wage

Full-Time

Weekly Hours

Hourly

Rate Earned

Unemploy. Ins.

Tax Deducted

Fed. Old-Age

Tax Deducted

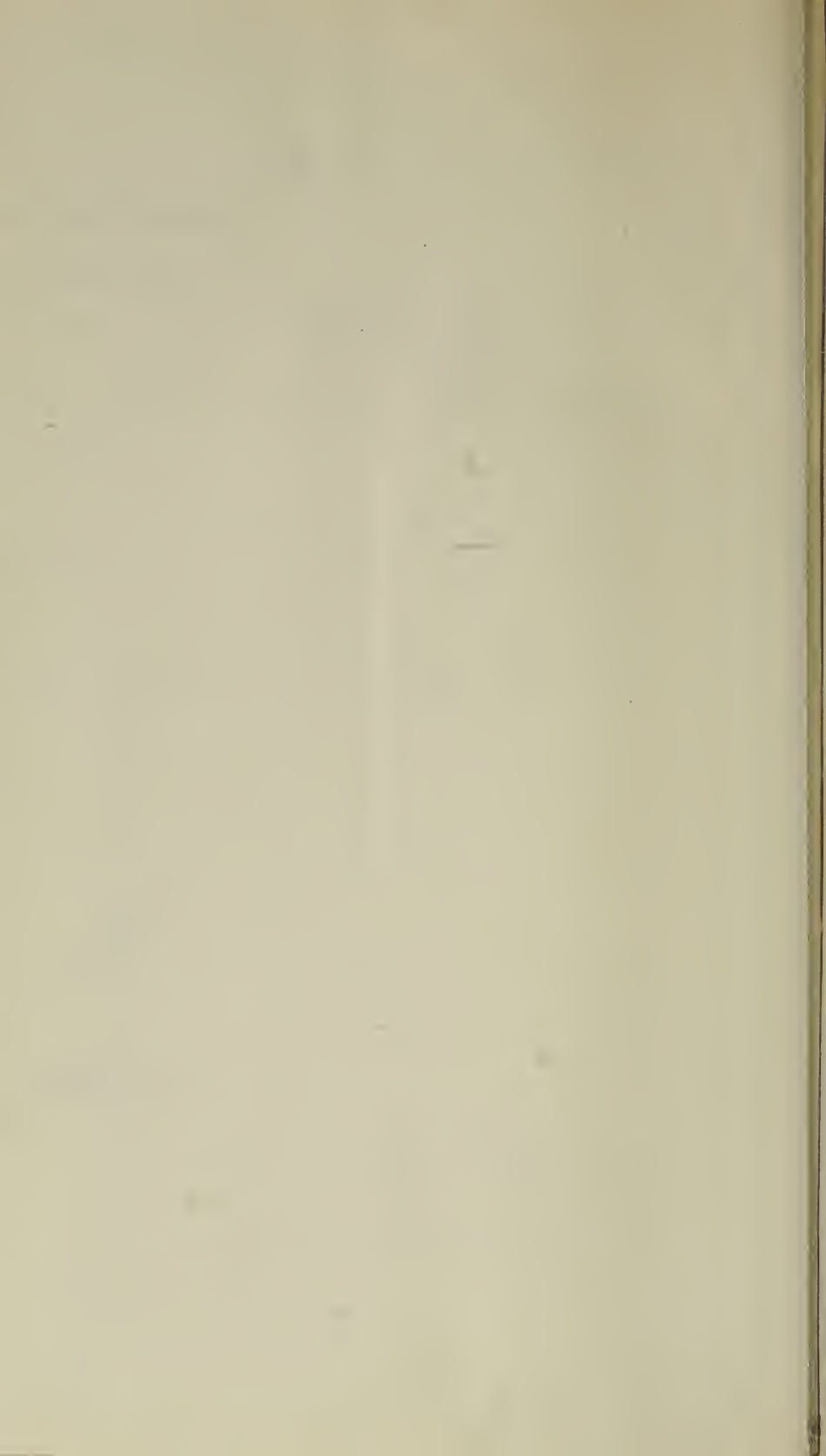
Number

Quarters

Worked

WEEKLY AVERAGE HOURS WORKED

1942 1943 1944



## RESPONDENT'S EXHIBIT No. 14-M

## EMPLOYEE'S EARNINGS RECORD

A

Name RICHARDSON, ELLA BURDETTE Employee No. 303 S. S. Account No. 512-16-9860  
 Address Phone  
 Date of Birth 5-17-20 Male Female X Single X Married No. of Dependents  
 Place of Birth Kan. Date Becomes 65 Age Nationality  
 Date Employed 11-19-42 Rate \$ .53  
 Type of Work Burr Rate Change \$73-1-10-43  
 3901-1 5% 78-2-14-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I.	F.O.A.B.	Bond	V-Tax	Net Amount	Period Ending
			8	6.36	.06	.06	.00	.00	6.24	1 Jan 2 1943
			47	26.77	.27	.27	.00	.70	25.53	2 Jan 9 1943
			48	37.96	.38	.38	1.90	1.30	34.00	3 Jan 16 1943
			48	37.96	.38	.38	1.90	1.30	34.00	4 Jan 23 1943
			48	37.96	.38	.38	1.90	1.30	34.00	5 Jan 30 1943
			47	36.87	.37	.37	1.84	1.30	32.99	6 Feb 6 1943
			36½	26.65	.27	.27	1.33	.70	24.08	7 Feb 13 1943
			48	40.56	.41	.41	.00	1.60	38.14	8 Feb 20 1943
			8	6.24	.06	.06	.00	.00	6.12	9 2-27-43
										10
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										12
										13
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										19
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										22
										23
										24
										25
										26

Average  
Weekly Hrs.

No. Weeks  
Worked

257

33

1st Quarter

2nd "

3rd "

4th "

In Case of Accident Notify

Name

Address

Phone

Relationship

Summary Current Yr. Prior Years

Total Earnings

No. of Weeks

Worked

Avge. Weekly

Wage

Full-Time

Weekly Hours

Hourly

Rate Earned

Unemploy. Ins.

Tax Deducted

Fed. Old-Age

Tax Deducted

WEEKLY AVERAGE HOURS WORKED

1942

1943

1944

Number

Quarters

Worked





## RESPONDENT'S EXHIBIT No. 14-N

## EMPLOYEE'S EARNINGS RECORD

A

Name SHARMAN, MARY E.

Employee No. 268

S. S. Account No. 559-18-2971

Address

Phone

Date of Birth 1-10-87

Male

Female X

Single

Married X

No. of Dependents

Place of Birth Tex.

Date Becomes 65

Age

Nationality

Date Employed 11-24-42

Rate \$ .53

Type of Work Burr, 2nd. shift

Rate Change \$ .73-1-10-43

3901.1

10%

.78-2-14-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I	F O A.B.	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	10.60	.11	.11	1.06	.00	9.32	1 Jan 2 1943
			47	26.77	.7	.27	2.68	.70	22.85	2 Jan 9 1943
			48	37.96	.38	.38	3.80	1.30	32.10	3 Jan 16 1943
			0	.00	.00	.00	.00	.00	.00	4 Jan 23 1943
			24	17.52	.18	.18	1.75	.30	15.11	5 Jan 30 1943
			47	36.87	.37	.37	3.69	1.30	31.14	6 Feb 6 1943
			48	37.96	.38	.38	3.80	1.30	32.10	7 Feb 13 1943
			32	24.96	.25	.25	.00	.70	23.76	8 Feb 20 1943
			Pd. off	[Illegible]			.00	.00	6.12	9 2-26-43
										10
										11
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										24
										25
										26

Average  
Weekly Hrs.No. Weeks  
Worked

192

64

1st Quarter

2nd "

3rd "

4th "

Totals

In Case of Accident Notify

Name

Address

Phone

Relationship

Summary

Current Yr.

Prior Years

Total Earnings

No. of Weeks

Worked

Avg. Weekly

Wage

Full-Time

Weekly Hours

Hourly

Rate Earned

Unemploy. Ins.

Tax Deducted

Fed. Old-Age

Tax Deducted

Number

Quarters

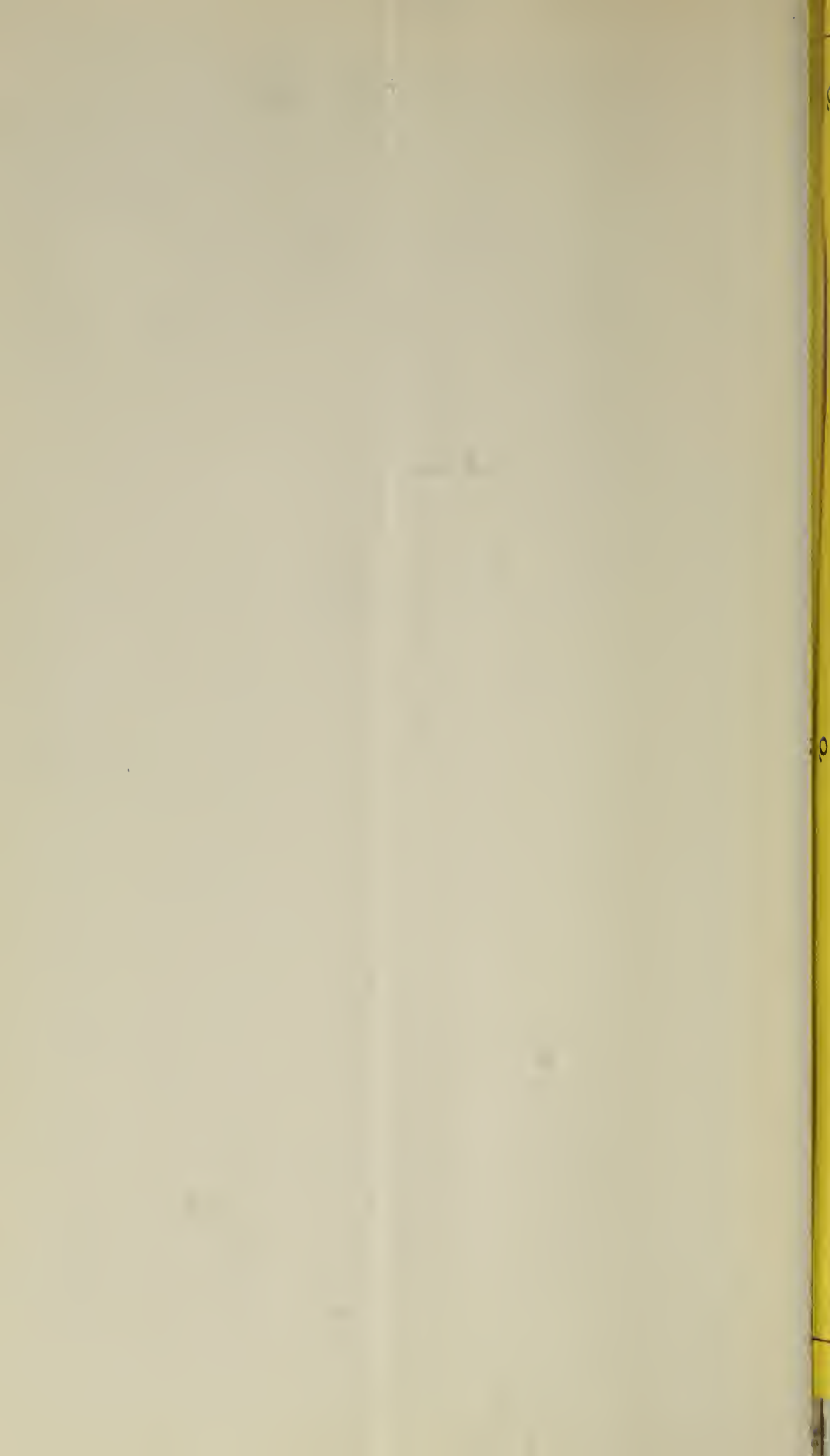
Worked

WEEKLY AVERAGE HOURS WORKED

1942

1943

1944



RESPONDENT'S EXHIBIT No. 14-O

EMPLOYEE'S EARNINGS RECORD

A

Name DESCHAZO, MYRTICE WADEEmployee No. 266S. S. Account No. 572-14-7927

AddressPhone

Date of Birth 9-10-05MaleFemale XSingleMarried XNo. of Dependents

Place of Birth Tex.Date Becomes 65AgeNationality

Date Employed 11-24-42Rate \$ 63

Type of Work Burr, 2nd. shift10%Rate Change \$ .73-1-10-43

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	S.U.I	F.O.A.B.	Deductions Bond	V-Tax	Net Amount	Period Ending
			16	10.60	.11	.11	1.06	.00	9.32	1 Jan 2 1943
			47	26.77	.27	.27	2.68	.70	22.85	2 Jan 9 1943
			0	.00	.00	.00	.00	.00	.00	3 Jan 16 1943
			0	.00	.00	.00	.00	.00	.00	4 Jan 23 1943
			0	.00	.00	.00	.00	.00	.00	5 Jan 30 1943
			0	.00	.00	.00	.00	.00	.00	6 Feb 6 1943
			40	29.20	.29	.29	2.92	.90	24.80	7 Feb 13 1943
			48	37.96	.38	.38	.00	1.30	35.90	8 Feb 20 1943
			8	5.84	.06	.06	.00	.00	5.72	9 2-27-43
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										26

	Average Weekly Earnings	No. Weeks Worked	
290	110	37	1st Quarter
			2nd "
			3rd "
			4th "
			Totals

In Case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avg. Weekly Wage		
Relationship	Full-Time Weekly Hours		
	Hourly Rate Earned		
	Unemploy. Ins.		
	Tax Deducted		
	Fed. Old-Age Tax Deducted		
	Number Quarters Worked		
	WEEKLY AVERAGE HOURS WORKED		
	1942 1943 1944		



RESPONDENT'S EXHIBIT No. 14-P  
EMPLOYEE'S EARNINGS RECORD

A

Name COX, ANNA MARIEEmployee No. 186S. S. Account No. 545-30-9655

Address 5311 SaturnPhone Wy. 8306

Date of Birth 11-20-93MaleFemale ✓SingleMarried ✓No. of Dependents

Place of Birth GermanyDate Becomes 65AgeNationality68-2-14-43

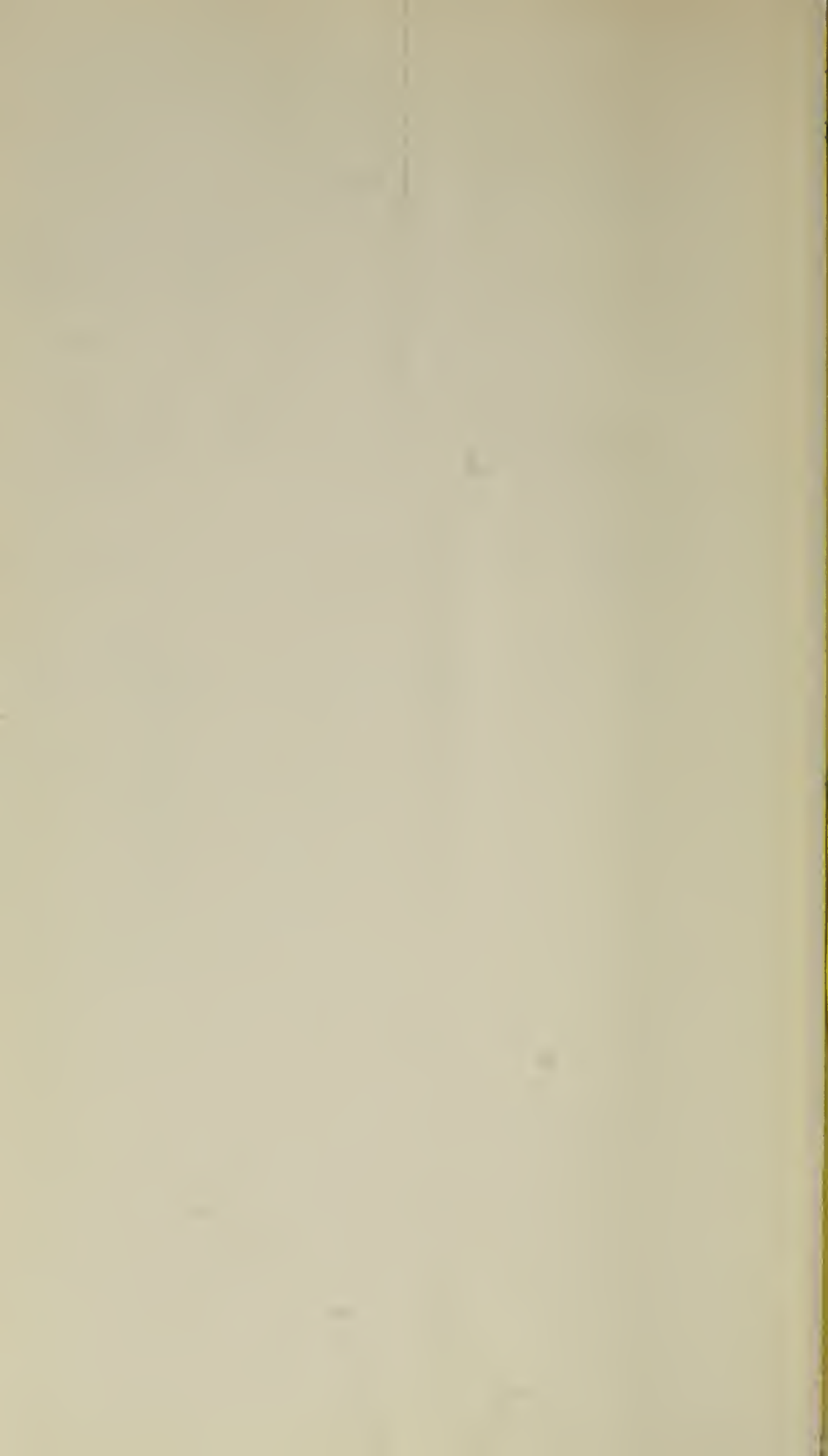
Date Employed 1-15-43Rate\$ 63

Type of Work Burr10%Rate Change \$

Total Hours Worked	Total Wages Earned	Average Weekly Hour	Hours Worked	Amount Earned	Deductions			V-Tax	Net Amount	Period Ending
					S.U.I.	F	O.A.B.	Bond		
			16	10.08	.10	.10	.00	.00	9.88	1
			48	32.76	.33	.33	.00	1.10	31.00	2
			48	32.76	.33	.33	3.28	1.10	27.72	3 Jan 16 1943
			48	32.76	.33	.33	3.28	1.10	27.72	4 Jan 23 1943
			48	32.76	.33	.33	3.28	1.10	27.72	5 Jan 30 1943
			48	32.76	.33	.33	3.28	1.10	27.72	6 Feb 6 1943
			48	32.76	.33	.33	3.28	1.10	27.72	7 Feb 13 1943
			48	35.36	.35	.35	.00	1.10	33.56	8 Feb 20 1943
			8	5.44	.05	.05	.00	.00	5.34	9 2-27-43
										10
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										24
										25
										26
										1st Quarter
										2nd "
										3rd "
										4th "
										Totals

In Case of Accident Notify	Summary	Current Yr.	Prior Years
Name	Total Earnings		
Address	No. of Weeks Worked		
Phone	Avg. Weekly Wage		
Relationship	Full-Time Weekly Hours		
	Hourly Rate Earned		
	Unemploy. Ins. Tax Deducted		
	Fed. Old-Age Tax Deducted		
	Number Quarters Worked		
	WEEKLY AVERAGE HOURS WORKED		
	1942 1943 1944		









## EMPLOYEE'S EARNINGS RECORD

A

Name		ALLISON, BESS MARIE		Employee No.	277 <del>255</del>	S. S. Account No.	545-30-7470
Address		1267 Burnside Ave.		Phone			
Date of Birth	6-22-93	Male	Female X	Single	Married X	No. of Dependents	
Place of Birth	Illinois	Date Becomes 65		Age	Nationality	68-5-14-42	
Date Employed	1-21-43	<del>Re-hired 4-10-49</del> (Rehired 5-14-43)		Rate		\$ 63 .63	
Type of Work	<del>Heavy</del> Inspector—2nd. Shift Nights					Rate Change \$65	
4107-1							70-6-6-43

[illegible]

				Summary	Current Yr.	Prior Years
In Case of Accident Notify				Total Earnings		
Name				No. of Weeks Worked		
Address				Avg. Weekly Wage		
Phone				Full-Time Weekly Hours		
Relationship				Hourly Rate Earned		
				Unemploy. Ins.		
				Tax Deducted		
				Fed. Old-Age		
				Tax Deducted		
				Number		
WEEKLY AVERAGE HOURS WORKED				Quarters		
1942	1943	1944		Worked		



A

Rate Change \$

	Average Weekly Hrs.	No. Weeks Worked	
270	105	37	1st Quarter
			2nd "
			3rd "
			4th "
			Totals





(Testimony of Irvin W. Sparks.)

Q. (By Mr. Nourse) You testified it was the custom of the plant to transfer, take girls off the burr bench and put them on milling machines and drilling machines and that that was the general order. Well, now, you know how that was carried out?

A. Yes, the foreman is instructed to see that the machines at all times wherever possible are kept running. The leadman on the drill presses, if he has been instructed by the foreman to go get a girl or girls from the burr bench, may do so by going to the leadgirl on the burr bench and ask for it. The leadgirl, if she can spare the girl, will do so. It is very close to there. Sometimes the foreman is busy, and we try to have a spirit of co-operation among the employees with the idea in mind that it is more or less of a big family [980] than anything else. [981]

Q. Now, do you know when Roy Johnson was made temporary leadman on the mills?

A. Yes. It was sometime during the month of July, 1942.

Q. (By Mr. Nourse) I will ask you if that is a photostatic copy of the complete employees' earnings records of Roy Johnson, so far as can be found yet in the company's records? A. That is.

Q. It starts—— A. January 3, 1942.

Q. I said complete. That is complete from the date of 1-3-42, down to——

A. That is the week of July, ending July 3rd, I think it is.

(Testimony of Irvin W. Sparks.)

Q. Ending July 3rd.

Mr. Nourse: I ask this be marked as our Exhibit No. 16. [982]

Trial Examiner Schneider: There being no objection, it will be admitted. [983]

Q. (By Mr. Nourse) When did Mr. Johnson cease to act as leadman?

A. He ceased a couple of times during that particular period.

Q. When did he finally? A. Finally?

Q. Yes.

A. At the time we hired a man by the name of Eustace Hall, who is now employed.

Q. Give me the date.

A. I don't have that date in mind.

Mr. Nourse: May I ask Mr. Johnson off the record—or right on the record? He is here in the court room. [984]

When was that?

Mr. Johnson: The last part of January or the first part of February.

Mr. Esterman: 1943?

Mr. Johnson: 1943.

Mr. Nourse: 1943.

Mr. Esterman: That is the last time he was temporarily a leadman.

Mr. Nourse: That is the last time he was temporarily a leadman.

Q. (By Mr. Nourse) But the changes in 1943 were on 1-10-43, when he was raised to \$1.12; 2-28-43, when he was raised to \$1.16-1/2; and 5-1-43,

(Testimony of Irvin W. Sparks.)

when he was raised to \$1.26-1/2, is that right? Read those figures. Maybe you can do it better than I can.

A. That is correct.

Q. What is the Belmar, what does that mean?

A. That is a secret project; that is all I can say.

Q. That designates the department, anyway, in which Mr. Johnson went to work when he left the lead?

A. Yes, sir.

Q. Is he doing any lead work there or is he just an operating employee?

A. I am not in a position to say, because it is entirely out from under my jurisdiction. [985]

Q. (By Mr. Nourse) I show you Respondent's Exhibit 2, and ask you if you have seen that before.

A. Yes.

Q. Did you ever see it on any bulletin board at the plant?

A. Yes, sir.

Q. Which one?

A. Both of the bulletin boards, one in the machine shop and [986] one in the main building.

Q. Do you know until about what date it remained there?

A. Around April the 15th or 16th, 1943.

Trial Examiner Schneider: Had it remained to that date?

Mr. Nourse: It remained there.

Trial Examiner Schneider: Until that date?

Mr. Nourse: Yes.

Trial Examiner Schneider: When did it go up there?

(Testimony of Irvin W. Sparks.)

Q. (By Mr. Nourse) Do you know how long before that it was put up?

A. I do not, but it was up there for some time before that. I didn't see it go up.

Q. You mean several days before?

A. It might have been a couple of weeks, or more. [987]

Q. (By Mr. Nourse) Now, what else was on the board at the time this was taken down, do you know?

A. Quite a number of things. Among some of them were A.F. of L. posters, or handbills. There were greeting cards, cards of thanks for presents received when children are born of employees in the plant. There was one card, I believe, that was an acknowledgment of flowers received, a funeral of one that had passed on. [988]

Q. (By Mr. Nourse) I show you Board's Exhibit 11 and [989] Board's Exhibit 2, and ask you if those were also among the things that were on the board on both the 15th and 16th of April?

A. They were.

Q. And how were they up there?

A. Shellacked.

Q. Now, what was done on both the 15th or 16th of April as to the boards?

A. They were clean.

Q. Anything left up?

A. Not a thing; everything was taken completely off the boards. [990]

Q. (By Mr. Nourse) Mr. Sparks, during this

(Testimony of Irvin W. Sparks.)

proceeding, I asked you to procure a copy for the record of respondent's 1, for identification, which has now been withdrawn. Did you order that from Art Strieb Photo Service, or whatever they are?

A. I asked that it be done, and it was done. I didn't personally do it.

Q. Now, I show you respondent's No. 17, for identification, and I ask you if that is what you were furnished when you asked for a copy of the other one? A. Yes.

Q. Do you know what wall this is a picture of?

A. Yes, it is the east wall, the outside portion of the east wall of the machine shop.

Q. That is in the alleyway between the machine shop building [991] and the main building?

A. That is correct.

Q. And just south of the easterly entrance into the machine shop, or one of the easterly entrances?

A. South about eight feet from the rolling door.

Q. And opposite this wall and against the main west wall of the main building were benches on which men sat on their rest period, men and women?

A. There were no benches at that time.

Q. But this was a passageway that men used in going from one place to another?

A. That is correct.

Q. I ask you if you saw the wall when it was in the condition shown by respondent's Exhibit No. 17, for identification? A. I did. [992]

Mr. Nourse: I am offering this as Exhibit No. 17 for the respondent. [993]



(Testimony of Irvin W. Sparks.)

Mr. Nourse: And is respondent's Exhibit No. 17 received?

Trial Examiner Schneider: One moment, please. Any objection to respondent's Exhibit No. 17?

Mr. Wilson: No objection.

Mr. Esterman: No objection.

Trial Examiner Schneider: It may be received in evidence.

(Thereupon, the document heretofore marked for identification as respondent's Exhibit No. 17, was received in evidence.) [995]

## RELATIONS BOARD

EXHIBIT NO. 17

Gilfillan Bros.

Sparks

OFFICIAL REPORT OF

Don Herrick

AFL MACHINISTS  
LODGE 311TO ALL GILFILLAN EMPLOYEES  
MEN AND WOMEN

NEW HOUSE COOKING WITH GAS!

Signed authorization cards came to the Union office  
in many mail! You're very much closer to Union repre-  
sentation, fair pay and fair treatment for Gilfillan  
employees. Next step is to

GILFILLAN EMPLOYEES MEETING  
AT THE WOODMEN HALL 1726 WOOD ST. CHICAGO

WEDNESDAY FEB. 12, 1936

... to answer all

... Gilfillan will be

... to meet Union

... will be there from 12

... 12-noon

... 12-noon

... 12-noon

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AFL MACHINISTS  
LODGE 311TO ALL GILFILLAN EMPLOYEES  
MEN AND WOMEN

NEW HOUSE COOKING WITH GAS!

Signed authorization cards came to the Union office  
in many mail! You're very much closer to Union repre-  
sentation, fair pay and fair treatment for Gilfillan  
employees. Next step is to

GILFILLAN EMPLOYEES MEETING  
AT THE WOODMEN HALL 1726 WOOD ST. CHICAGO

WEDNESDAY FEB. 12, 1936

Purpose of meeting - to answer all

questions about how Gilfillan will be

made a good place to work. Union

representatives will be there from 12

noon on Union steps from 12-

noon

100 AM-245-500-665 PM

THIS MEETING IS CALLED BY YOUR INTEREST-

NOT THE COMPANY'S. ATTEND ON YOUR OWN FREE

CHALLENGE ANYONE FOR COMING. FOR FREE

YOU FOR STAYING HOME AND RESISTANCE MEETING

BE INTERFERED WITH

(Testimony of Irvin W. Sparks.)

Mr. Nourse: And is respondent's Exhibit No. 17 received?

Trial Examiner Schneider: One moment, please. Any objection to respondent's Exhibit No. 17?

Mr. Wilson: No objection.

Mr. Esterman: No objection.

Trial Examiner Schneider: It may be received in evidence.

(Thereupon, the document heretofore marked for identification as respondent's Exhibit No. 17, was received in evidence.) [995]

CASE NO 21672

EXHIBIT NO. 17

IN THE MATTER OF:

*Lillian Brown.*

DATE 7-14-43

Garke

ETHIOPIA: FISHERY OFFICIAL REPORTS.

BY Willis Herrick

AF of L MACHINISTS  
LODGE  
#311  
GILFILLAN EMPLOYERS  
MEN AND WOMEN

Y. is FLARE COOKING with GAS!

SHILL-PI EMPLOYEES MEETING  
at the WOODMEN HALL 1720 W. 10th St.  
WEDNESDAY

RECEIVED BY

[illegible]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 03/11/2001 BY 60322  
UCBAW

the corner was not  
longer and was to be the same  
place as the other in the room  
and was the same in the room

IN EMPLOYEES AND THE  
GOVERNMENT HALL

245-  
 5  
 100  
 100  
 100



(Testimony of Irvin W. Sparks.)

Q. What are the orders, in the plant, as to who may take a drunk off a machine?

A. Anybody can take a drunk off a machine, and if he gives them any trouble at all, go get a guard and get him off the premises.

Q. That is whether it is a leadman or foreman or janitor?

A. It doesn't make any difference who it is.

Q. Do you know the understanding that was had when Roy Johnson went in July, when he became temporary leadman?

A. Yes, I know the understanding that was had with him.

Q. What was it?

A. He was made a temporary leadman with the distinct understanding that he have no power to hire or fire, and that as quickly as we could hire a competent leadman, that is, a man greater experienced than Roy Johnson in setting up and running mills, we would do so, and he would revert back to an operator.

Q. You say with a distinct understanding he had no power to hire or fire. Did any leadmen have that?

A. No, sir.

Q. Tell what was done in attempts to get some one experi- [1001] enced to lead between then and the time he went over to the other department you have no control over?

A. Continual application to the various agencies for such a man.

Q. Was he actually replaced?

A. He was replaced twice.



(Testimony of Irvin W. Sparks.)

Q. Twice?

A. By two different men. Neither one of them proved satisfactory. One of them quit of his own volition, and Mr. Cramer had to discharge the other man because he wasn't competent.

Q. Then you finally got a competent man?

A. And he is still employed.

Q. Who is that? A. Eustace Hall.

Q. Eustace Hall. Had he been formerly in your employ? A. Never prior to the time he came.

Q. I mean prior to the time he was made leadman, to replace Roy Johnson.

A. He was hired as a leadman, and he had never been in our employ prior to that time.

Q. Do you know what reliance Mr. Johnson had to put on Mr. Hoenes in doing his work?

A. Quite a bit.

Mr. Esterman: I think this is going in rather loosely. [1002] I would like to have a little more foundation for it.

Trial Examiner Schneider: What is the purpose of it, Mr. Nourse?

Mr. Nourse: I want to show that due to the intricacies of producing for war we had to take a man, no matter what his position had been in any other organization, and put him on here temporarily in order to carry out our war production, and this man really wasn't one of the persons that has been described that had the experience to really make him a leadman. He was just a stop-gap and he had to rely on the foreman to really carry out his job.

(Testimony of Irvin W. Sparks.)

Trial Examiner Schneider: What relationship is there between the amount of experience he had with the job and the amount of authority he had when he was given the job?

Mr. Nourse: Well, would it make any difference, in the findings, as to whether or not the company was interfering with or dominating the union, to show that through just these intricacies of the situation they had to take the president of the union and put him on a certain job, as leadman?

Trial Examiner Schneider: The question is whether or not Mr. Johnson was a supervisory employee.

Mr. Esterman: And not the reason he was put on.

Mr. Nourse: Let's assume now that the Examiner should hold, under the evidence, that he was supervisory. I don't [1003] know what you are going to hold. I can only assume you are going to hold against us. I say you might determine that situation against us. Then you would say supervisory and president of the union, company controlled. That might be the cycle in which you would reason.

Trial Examiner Schneider: Yes.

Mr. Nourse: Now, let's say that I show here that this was something in order to go ahead with the war effort we had to do. We either had to say to him, "Get out, resign from the union, because we have to make you leadman." Or go ahead and try to make the best of it. Doesn't the intent, doesn't

(Testimony of Irvin W. Sparks.)

the purpose of doing a thing, the result of it, have anything to do with the determination of that question?

The trial Examiner Schneider: Suppose Mr. Johnson had been made plant manager, due to the exigencies of the war, would you still say you were in the same position?

Mr. Nourse: I think that is a matter of management. Let's say he had been made president of the corporation, then he would have been management, wouldn't he?

It seems to me just as open as—the purpose and intent are just as much a part of what you have to determine as what the results were, from the act. The fact that a leadman is also an officer of the union doesn't necessarily result in control or unfair labor practice or anything else, but if it is done for a purpose, to accomplish results and [1004] does do it, that is a different question. If I am foreclosed on that, I want to know it right now and I will cut down my evidence a lot.

Trial Examiner Schneider: How much further do you expect to be with Mr. Sparks on that point?

Mr. Nourse: Mr. Sparks today?

Trial Examiner Schneider: Yes, on that point.

Mr. Nourse: I want him to explain what the whole situation was as to why Mr. Johnson was in there and how it was a fact he was picked because he had the experience to fill it. He had to rely back to the foreman, merely a kind of—when they got a man they put him on. That, to my mind, disposes

(Testimony of Irvin W. Sparks.)

of any intent to influence or control the union, by making its president leadman. If that isn't what the Board, by its evidence, intended to establish or infer, then I don't know what the purpose of the evidence was at all.

Mr. Esterman: We don't try to show the intent, we try to show the facts. I submit the facts will speak for themselves, why he was made a temporary leadman or temporarily put in charge, or what shouldn't make any difference. I simply say it is not material to this record, unless counsel wants to show, at the time he was made a temporary leadman, that everybody in the plant was notified it was temporary, and he wasn't rated as a foreman at all, and they shouldn't regard him as such. If it is preliminary to that I say it [1005] is material.

Mr. Nourse: I don't intend to show we went out and stood up on a rostrum and said that or hung a poster on Mr. Johnson's back that he was a temporary leadman. I do intend to show, and I have shown he was displaced twice in the period.

Mr. Esterman: I think that is competent evidence.

Trial Examiner Schneider: The fact as to his actual authority as distinguished from his apparent authority may be relevant. You may proceed.

Q. (By Mr. Nourse): Compared to the leadman that had formerly held the job and the one that followed him, what reliance did he have to put on Hoenes and what supervision did he have to have from Hoenes?

(Testimony of Irvin W. Sparks.)

Mr. Esterman: If you know.

Q. (By Mr. Nourse): If you know.

A. A great deal more. Mr. Johnson was the best man we had at the time, that we could get for a leadman. He knew more than anybody else on the mills at the time, outside of Mr. Hoenes.

Q. But not as much as was required for the job?

A. Not enough.

Q. Where is your office in relation to where all this work goes on?

A. Fifteen to twenty feet away from the mills, and then as [1006] the building progresses it gets that much farther away.

Q. That is just a glass partition so you can look out over the whole works?

A. I can stand in the office and see all the parts of the shop.

Q. How often are you out through the shop in conferring with the workmen and the superintendent?

A. All day long, off and on.

Q. Now, during this period before Eustace Hall came on and on the occasions when you had picked others as leadmen, on the mills, what did you do with Roy Johnson, where was he sent?

A. Back as an operator.

Q. What is it?

A. Back as an operator, until Eustace Hall came, and then he was transferred to the turret lathes very shortly thereafter.

Q. In other words, he was put back under these men you put on as leadmen, and then when they



(Testimony of Irvin W. Sparks.)

didn't pan out, he was made leadman again, and then you got another one, and then he went back as an operator under them?

A. That is right. [1007]

Q. (By Mr. Nourse): What percentage, I will put it that way, of operational employees—by that I cut out foremen, those in a supervisory capacity, but I include leadmen—and I cut out office help—what percentage of the total operating employees are in the machine shop?

A. Forty per cent. [1008]

Q. How are supervisory employees, such as Cramer and Walters and Whittet paid, by the hour or how?      A. Paid weekly.

Q. Weekly wage?      A. Weekly salary.

Q. And what are their hours?

A. 24 hours a day, if necessary.

Q. They are each in charge?

A. Ordinarily, Mr. Whittet's hours are from six in the morning until six in the evening, for two days, and then he is off one.

Q. I am not talking about that. I am just talking about people simply situated, that are general foreman, they have a shift?

A. They have a shift.

Q. Mr. Cramer's hours are a good deal like yours?      A. A good deal like mine.

Q. And the sun doesn't set on the Sparks empire? [1009]      A. I should say that is so.

Q. Mr. Cramer is there days and sometimes at night?



(Testimony of Irvin W. Sparks.)

A. He is there at different times. His normal hours are from eight to five, but he is there in the evening, two o'clock in the morning, he may come in at 11 at night, he may be there continuously.

Q. The same with you?

A. The same with me.

Q. Now, there has been some testimony here as to one Brooks who was in the shipping room at night. What is his capacity?

A. He is just a workman.

Mr. Esterman: Can we have his full name?

Mr. Nourse: There are two Brooks.

The Witness: His initials are E. P. Brooks.

Q. (By Mr. Nourse): Who is the head or foreman or leadman? You have a head shipping clerk?

A. We have a head shipping clerk and his name is A. R. Nigh.

Q. How many people are there in your large shipping department at night?

A. Mr. Brooks. Now, once in a while there may be some work that has to go out, and then he may ask for a couple of girls out of the burr department, that was prior to February 22nd. Subsequent to that, the day man does the same work as he has to, and he has to stay over at the present time. That is the arrangement. [1010]

Q. Where would he go? In the old days, where did he go when he wanted to get a girl from the burr department?

A. Marge Goebel, if he couldn't find the foreman.

(Testimony of Irvin W. Sparks.)

Q. Just go over and say, "Marge, have you got some girls to help me out?" A. He would.

Q. Mr. Brooks is on an hourly rate?

A. On an hourly rate.

Q. Are any leadmen or women in the plant on a weekly or a monthly wage, or are they all on an hourly rate? A. Hourly rate.

Mr. Nourse: May I have a conference with Mr. Esterman just a moment? This is the matter I spoke to the Examiner about?

Trial Examiner Schneider: We will take a short recess.

(A short recess taken.)

Trial Examiner Schneider: We will proceed.

Mr. Nourse: I have shown counsel a communication to the company from the United States Army, War Department, relative to revealing any information as to the plant, protection, and he has very kindly offered to stipulate that the guards at the plant of the respondent are not employed by it, and that neither the respondent nor its officers can give them any orders or directions.

Mr. Esterman: I will stipulate that that is the fact. [1011]

Q. (By Mr. Nourse): During January and February, did you notice any of the operators of the machines wearing A. F. of L. Buttons?

A. Yes.

Q. Do you know about how many?

A. Somewhere between 40 and 50 percent on the

(Testimony of Irvin W. Sparks.)

night shift. I think one on the day shift. I don't remember the swing shift.

Mr. Esterman: One percent or one person?

The Witness: One person.

Q. (By Mr. Nourse): Can you remember the names of any?

A. Yes, I can remember the name of George Hines.

Q. Anybody else? A. (No response.)

Q. Is he the same man who testified here?

A. Yes.

Q. Anybody else?

A. I can't remember the name of the other man who I have in mind. He is a janitor.

Q. Were either of those men discharged?

A. No, sir.

Q. At any time? A. No, sir. [1012]

Q. To your knowledge were any other men wearing A. F. of L. buttons discharged? A. No.

Q. Did you learn later that two of the men who were on the rework at night were A. F. of L.?

A. I heard that they were.

Q. But you didn't know at the time?

A. I didn't know and don't know today that they are.

Q. Do you remember a man named Haag?

A. Yes, I remember him.

Q. Do you remember whether or not he is one of those you saw wearing a button?

A. I don't remember whether Mr. Haag had a button on at the time.

(Testimony of Irvin W. Sparks.)

Q. Is he in your employ?

A. He is at the present time.

Q. It was testified here by Mr. Hines, I think on June 30th or July 1st, that Mr. Haag was one of the A. F. of L. committeemen in the plant, is that right?

A. I think so.

Q. Do you remember that?

A. I think that was testified to.

Q. After he testified, did you get an application from Mr. Haag for reemployment?

A. We did. [1013]

Q. And what action did you take on it?

A. We reemployed him.

Q. And had he been discharged before that, or had he voluntarily quit?

A. He resigned.

Mr. Nourse: I ask that this be marked respondent's Exhibit No. 19, for identification.

(Thereupon, the document referred to was marked Respondent's Exhibit No. 19, for identification.)

Q. (By Mr. Nourse): Now, I show you respondent's Exhibit No. 19, for identification, and ask you if that is a photostatic copy of the complete earning record of George Mose Hines, whom we have just mentioned, while he was with the company?

A. I believe it to be, yes.

Q. That is what you had prepared, is it?

A. That's right.

Q. As far as your knowledge, this is a true photostatic copy of the entire ledger sheets as to George

(Testimony of Irvin W. Sparks.)

Hines, which are known as employees' earning record?      A. That is correct.

Mr. Nourse: I offer it in evidence as Respondent's Exhibit No. 19.

Mr. Esterman: Does counsel care to state any purpose?

Mr. Nourse: Well, I have two purposes. First, is the [1014] impeachment of Mr. Hines, and second, to show that there was certainly no discrimination against him as a member of the A. F. of L. and this shows the constant rate of increase in pay before and after his known union activities, and we have shown that he wasn't discharged previously.

Mr. Esterman: No objection.

Mr. Wilson: No objection.

Trial Examiner Schneider: Mrs. Volz?

Mrs. Volz: No objection.

Trial Examiner Schneider: It may be admitted.

[1015]

Q. (By Mr. Nourse): Is Mr. Brussow employed in that plant?      A. Yes.

Q. And during January and February was he so employed?      A. He was.

Q. And in what capacity?

A. As a foreman on the night shift in the cable department.

Mr. Nourse: Will you produce Mr. Brussow's application or authorization card, please?

Mr. Esterman: You are addressing Mrs. Volz?

Mr. Nourse: I am addressing Mrs. Volz. [1016]

Trial Examiner Schneider: Let the record show

(Testimony of Irvin W. Sparks.)

that Mr. Brussow's application card was produced by Mrs. Volz.

Mrs. Volz: Athorization card.

Trial Examiner Schneider: Authorization card.

Mr. Esterman: As to this card, we will stipulate that this is one of the cards which was included in Mrs. Volz's tabulation; also that this was brought to her, as one of the authorizations obtained, for the Machinists, by Mr. George Hines.

Mr. Nourse: Among the hundreds he testified he obtained?

Mr. Esterman: That is right. I don't want to be put in the position of guaranteeing his signature.

Mr. Nourse: I don't ask that. I just offer it as our Exhibit next in order. This has nothing to do with Mr. Sparks. I don't know why I asked for it in connection with him.

Trial Examiner Schneider: You are referring to your offer of respondent's Exhibit No. 21?

Mr. Esterman: Are you going to state your purpose, counsel?

Mr. Nourse: Yes. It will be my hope, at least, to show, after that foremen in the plant were, during this period, soliciting memberships in the A. F. of L., and that they are still employed.

Mr. Esterman: I don't see any materiality to respondent's [1017] Exhibit 21, for identification. I don't think it helps the record. We will be glad to inform counsel now, if he isn't already informed, that foremen are admitted to membership in the



(Testimony of Irvin W. Sparks.)

Machinists union, and a great many foremen are members. Isn't that right?

Mrs. Volz: That is right.

Mr. Esterman: Certainly, there is no connection here about A. F. of L. being company dominated. I don't see the materiality of it, and I am making my objection on that basis. [1018]

Trial Examiner Schneider: It will be admitted as an authorization card bearing what purports to be the signature of Robert J. L. Brussow, describing him as a foreman and cable swager in the cable department.

(Thereupon, the document, heretofore marked for identification as Respondent's Exhibit No. 21, was received in evidence.)

### RESPONDENT'S EXHIBIT No. 21

[Postcard]

[In cut]: Postage Will be Paid by Addressee

[In cut]: No Postage Stamp Necessary if Mailed  
in the United States

Business Reply Card

First Class Permit No. 16049, Sec. 510, P. L. & R.,  
Los Angeles, Calif.

International Ass'n of Machinists, Lodge 311

Room 100 Labor Temple

532 Maple Avenue

Los Angeles, California

(Testimony of Irvin W. Sparks.)

Authorization for Representation Under the  
National Labor Relations Act

[In cut]: International Association of Machin-  
ists I A M

A. F. of L.

I, the undersigned employee of

~~Douglas Aircraft Co.~~

~~5201 Santa Fe Avenue~~

~~Vernon, Calif.~~

[In pencil]: Gilfillan Bro's 1815 Venice Blvd  
L. A.

authorize Lodge No. 311, International Association  
of Machinists, American Federation of Labor, to  
represent me in negotiations for better wages and  
working conditions.

This authorization supersedes any similar author-  
ity previously given to any person or organization.

My Signature Robert J. L. Brussow

My Address 1577½ W. 46th St. Phone \_\_\_\_\_

Kind of Work Foreman, & cable Swager

Dept. 8 (cable)

Date Feb. 9, 1943.

Shift: Day [x] Swing [ ] Graveyard [ ]

[In pencil]: Hines

41 [Union label]

(Testimony of Irvin W. Sparks.)

Cross Examination [1022]

Q. In other words, you don't distinguish, in your mind, so far as Johnson is concerned, between a leadman or being temporarily in charge? You would have referred to him, at that time, either as leadman or being temporarily in charge?

A. It would mean the same thing. [1024]

Q. Well, according to those Exhibits, respondent's Exhibits 14-A through S, and looking at these employees earning records, they show pay periods ending at least in January and February of this year, the pay periods ended with Saturday?

A. That's right.

Q. And one of those Saturdays would be the 16th of January, would it not?

A. That is correct.

Q. Now, for the pay period ending January 16th, when would the people in the machine shop receive their checks?

A. The following Thursday. [1032]

Q. Thursday of the next week?

A. Of the following Thursday, which I believe would calculate about the 21st of January.

Q. That is perfect calculation.

Now, will you tell me what that date means on those cards, that is, on 1-10-43? Does that mean that is the date of the week on which the increase is to become effective, or what does it mean?

A. 1-10 means that is the date it became effective.

Q. Beginning on the 10th of January, that person received a higher rate?

A. Yes.

(Testimony of Irvin W. Sparks.)

Q. And so that the 10th being the first day of the week ending the 16th, people were paid on the 21st for that week, the 21st of January?

Mr. Nourse: They wouldn't be paid on the 21st. These women never worked on Sunday, you know. Sunday was the 21st. They would be paid on Saturday.

Mr. Esterman: Thursday was the 21st.

Mr. Nourse: I thought you were talking about February, I'm sorry.

Mr. Esterman: The 10th was on a Sunday?

Mr. Nourse: All right.

Q. (By Mr. Esterman) That is, the 10th was considered the first day of the week and that is why it shows on there, [1033] even though the 10th was a Sunday and they didn't work on Sunday.

A. That's right.

Q. Now, do you recall whether any of the employees who were the subject of those payroll records, and I mean all but the last four in respondent's Exhibit No. 14, with subletters, do you recall whether any of them, or any combination of them were notified as to the increase in rate that was to be effective?

A. Individually.

Q. Individually or collectively or in groups, or however?

A. Individually, collectively.

Mr. Nourse: He hasn't finished his question yet.

Q. (By Mr. Esterman) When they were notified, any one, or group, or any combination of them in

(Testimony of Irvin W. Sparks.)

any way, whether they were given notice of the increase?       A. No, they weren't.

Mr. Nourse: You mean prior to getting their checks?

Mr. Esterman: Yes, that is exactly what I mean. Thank you.

The Witness: No, they were not.

Trial Examiner Schneider: They weren't informed of the increase?

The Witness: Not by myself.

Mr. Nourse: Nor to your knowledge by anyone else? [1034]

The Witness: Nor anyone else, to my knowledge.

Q. (By Mr. Esterman) Now, I haven't misunderstood you, have I, on Thursday of each week, at least at that time, January of 1943, pay checks were issued for the previous calendar week ending the previous Sunday, so there would be Monday, Tuesday, Wednesday and Thursday still due them at the time they got their checks, isn't that correct?

A. That is right.

Mr. Esterman: No more questions.

#### Redirect Examination

Q. (By Mr. Nourse) With whom did you first discuss the pay raise that was given to be effective January 10th, 1943?

A. When was the first time?

Q. Yes, when was the fact of being such a raise given first discussed by you with anyone?

A. With Roy Johnson, when he came in the office and spoke to me about it.

(Testimony of Irvin W. Sparks.)

Q. When was that?

A. I don't remember the date.

Q. Did this raise bring the women in the plant up to the comparative wage scale of men of the same rank of employment and doing the same work?

A. I don't think I quite understand your question. I believe you are trying to ask me if we had a differential between men and women, and if we adjusted that at that time? [1035]

Q. That is what I mean.

A. If that is it, that is the facts.

Q. All right. Now, when you had given other raises in the plant prior to this, was any announcement made of those raises prior to the time the checks were given out giving the raises?

A. No, sir.

Q. And do you have any announcement of raises before they are actually in effect and they get the checks? A. No, sir.

Q. Now, when you said in your letter that Mr. Johnson was in charge, you mean he had the duties and performed the duties which you have described here as being done by leadmen in the milling department?

At the time I wrote that letter I meant identically the same thing I testified to today as to his duties and his responsibilities. [1036]

#### Recross Examination

Q. (By Mr. Esterman) What do you know, Mr. Sparks, was the extent of the increase on January



(Testimony of Irvin W. Sparks.)

10th which you stated was to equalize the wages of women? How many women were raised, if you know, that is what I meant?

A. Frankly, I can't tell you how many.

Q. Was it only women that were involved?

A. Only women that were involved.

Q. And it was substantially, at least in most of the cases, 20 cents an hour, was it not? From 53 cents to 73 cents?

A. I believe that is what the record shows.

Q. I will put it to you this way: In cases where they were getting 53 cents, they were raised to 73 cents, wasn't that the general idea?

A. It was a ten-cent raise to bring them up to the equal starting rate of men and a 10-cent raise to bring them an automatic five-cent raise every 30 days. [1038]

Q. (By Trial Examiner Schneider) What authority does a leadman have over the operators on a machine under him, a machine on which the leadman is in charge?

A. By that, Mr. Schneider, I assume that you mean disciplinary. [1039]

Q. Does he have any authority of any kind?

A. Only to set the machine up and after it is set up, to tell the man that this is the way—to show him and then tell him, "You run it like this".

Q. Suppose the operator doesn't run the machine the way the leadman directs him to, what should the leadman do?

(Testimony of Irvin W. Sparks.)

A. He should call that to his attention, and if a man continues to run it in his way, rather than in the leadman's way of instructing him, then he has to go to the foreman or the superintendent and get him up there and say, "This man refuses to obey my instructions as to how this part should be run." And from there on disciplinary action is taken.

Q. Well, now, suppose a leadman expressed himself as being dissatisfied with the quality of the work of an operator, and he reported his opinion to the foreman, you say it would be up to the foreman to make a disposition of the matter? A. Yes.

Q. Now, in so doing, would the foreman give any weight to the opinion of the leadman?

A. If he had prior observation of the man's ability or inability to do the work, he might.

Q. That is, if the foreman had some——

A. (Interrupting) If the foreman had prior observation of this particular operator or workman's inability to produce the part properly, he might give some weight to it in this [1040] respect: He would say, "Well," to himself. "I know that is right."

Q. In that case the foreman would not be acting upon the leadman's opinion, but his own knowledge, would he not? A. That is right.

Q. Suppose the leadman had no personal knowledge as to the idiosyncrasies of the operator, and all he knew was what the leadman told him, would he give any weight to the opinion of the leadman?

A. Only that his instructions are to make a

(Testimony of Irvin W. Sparks.)

thorough investigation and determine, for himself, if those recommendations are right or wrong.

Q. You mean it would be mandatory upon the foreman to make his own investigation?

A. That is right.

Q. And not accept the word of the leadman?

A. No, sir.

Q. You are positive of that?

A. If he did he is going entirely contrary to instructions.

Q. Do you know what the practice was? Sometimes the practice is different from the instructions.

A. Not in the majority of cases. I will put it that way, Mr. Schneider, because I am not there 24 hours a day.

Mr. Nourse: In other words, do you know of any times in which—— [1041]

The Witness: (Interrupting) I do not know of any times where the foreman has gone entirely upon the leadman's recommendation.

Q. (By Trial Examiner Schneider) You say entirely. Do you mean, then, that in some cases they have done so partially?

A. After an investigation and he finds what the leadman recommends as being true, then that would unquestionably influence him. I believe it would be in the same case.

Q. If the foreman acquires knowledge of his own observation, there is no necessity for him to rely upon the leadman's opinion, then he wouldn't be relying upon the leadman's opinion?

(Testimony of Irvin W. Sparks.)

A. No, I guess that is right.

Q. Would you say you know of no case where the foreman, in making a disposition as to what is to be done concerning an operator, relied, in any way, upon the opinion or recommendations of the leadman?

Mr. Nourse: I submit that the Examiner's question calls for this witness to determine what went on in the mind of somebody else. It would be a clear guess, speculation of the wildest kind.

Trial Examiner Schneider: If he knows.

Mr. Nourse: Unless the foreman had said, "Well I summed this case up this way. I saw that the fellow didn't do very good work and the leadman said he didn't do very good work, [1042] and putting it in and adding that, I discharged him." That is the only way he could determine what went on in the foreman's mind.

Trial Examiner Schneider: I will put this question to you, Mr. Nourse: Suppose that a foreman came to Mr. Sparks and said to him that leadman A had reported to him that Operator B was inefficient, and "I therefore discharged him."

Mr. Nourse: There it would be relying wholly upon him.

Trial Examiner Schneider: That is what I am asking Mr. Sparks. If he has no information on the subject, obviously he can't answer it.

Mr. Nourse: Then I misunderstood the Examiner's question, because the Examiner's question was, did he rely partially, do you know of any case

(Testimony of Irvin W. Sparks.)

in which he relied in a partial manner on what the leadman's recommendation was.

Trial Examiner Schneider: That is right.

Mr. Nourse: Now, the case you now state is where he had had the recommendation and acted upon it; not on anything else. I am not trying to object to the thing, but I cannot see how this witness can judge what went on in a foreman's mind where he knew, made an investigation and knew facts, and also knew that the leadman had recommended; what went on in the mind of the foreman, when he recommended his conclusion, unless the foreman had told him, "I reached it in this manner."

Trial Examiner Schneider: He wasn't being asked what [1043] went on in the foreman's mind. He is only being asked if he knows what the foreman did.

Mr. Nourse: I submit that isn't your Honor's question.

Q. (By Trial Examiner Schneider) In view of the discussion between Mr. Nourse and myself, do you understand what I am driving at?

A. I believe I do, and I will have to say, to my knowledge, I know of no instance of that type.

[1044]

Q. Then, on your direct examination, Mr. Sparks, you made a reference to the fact that on April 16th the bulletin boards were stripped of everything that was posted on them, is that correct?



(Testimony of Irvin W. Sparks.)

A. I believe I said the 15th or 16th, Mr. Schneider, but those were the words.

Q. That applied to both of those boards?

A. That applied to both bulletin boards.

Q. Who removed the material from the boards?

A. Mr. J. E. Nevins.

Q. Why was it removed?

A. It was removed according to Mr. Gilfillan's instructions to Mr. Nevins.

Q. Was any reason given for the removal?

A. In a statement to Mr.— [1046]

Mr. Nourse: (Interrupting) Do you know what was given? If you know, say so; not what was in the statement. Just state what Mr. Gilfillan said, not what was in the statement.

The Witness: He said to have the bulletin boards cleaned because he was tired of seeing so much junk, and so many productive employees spending so much time up there reading what was on the board; he thought he had better clean it up.

Q. (By Trial Examiner Schneider) Mr. Sparks, is there any differential in wage rates between the operator of a machine and the leadman?

A. There is in some cases.

Q. Not in all cases?

A. Not in all cases.

Q. You mean that some operators will earn as much as the leadman?

A. In the case of Mr. Johnson, I believe, some of his men—men that were temporarily under him, earned as much as he. I could be mistaken in that.



(Testimony of Irvin W. Sparks.)

We had one other man there, who was the best leadman we could get, and I don't believe he was paid any more than some of the men under him.

Q. Is that the normal state of affairs?

A. That is not the normal state of affairs.

Q. What would you describe as normal? [1047]

Mr. Nourse: I will state, if you will let me, something here that will save the record. The union contract that was then in effect called for 10 cents an hour more for leadmen than operators, and that was generally paid, but it was not paid in the case of Mr. Johnson or one or two others that were not experienced.

Trial Examiner Schneider: Thank you. [1048]

Q. Raises were given around January 10th, as I understand? A. Yes.

Q. Can you give the circumstances surrounding that raise, how it happened to be made?

A. Yes. Roy Johnson came to me and I think it was in the latter part of December or first of January, and spoke about bringing women up to an equal of men, on their starting rate. I told him that I would take the matter up, take it under consideration and see what could be done about it. I spoke [1050] to Mr. Gilfillan about it, and I believe General Order 16 had come out some time prior to that.

Mr. Nourse: You mean War Labor Board Directive 16?

The Witness: Either that or one by the President, I don't remember which. But, anyway, it

(Testimony of Irvin W. Sparks.)

was an order in which women were supposed to be brought up to the equal of men. We had not as yet received a copy of it, but we found it was in effect, and we put that in January 10th. I notified Mr. Johnson to that effect. [1051]

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ROY JOHNSON

a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Nourse) Mr. Johnson, I think it has been testified to here that in the 1943 contract, which is Board's Exhibit 12, that was entered into, that certain provisions of it were carried over from the old contract. Now, I will call your attention to Exhibit A, and ask if that had been entered into during the period that the 1942 contract was still in existence between the parties?

A. Yes, it was. [1104]

Q. Did you have a meeting with Mr. S. W. Gilfillan, at the Gilfillan plant, early in March, 1943?

A. Yes, I did. [1112]

Q. How was the meeting arranged?

A. Well, I arranged the meeting. On Mr. Gilfillan's return from, I believe, Washington, he walked through the factory early in the morning and I talked to him at that time in reference to that.

Q. What did you ask him?

(Testimony of Roy Johnson.)

A. Well, we were already drawing up the contract for the previous year and we got a letter from the National Labor Relations Board calling for a petition that the A. F. of L. had asked for an election in the plant.

Q. You received that letter?

A. Yes, I did.

Q. What did you say to Mr. Gilfillan?

A. Well, in view of the fact that it was already started, the negotiations were already started for our contract and in talking about it, I asked him if it was making any difference as to putting the contract in force.

Q. When you met him, this was in the factory?

A. In the factory.

Q. What did he say?

A. He suggested that I talk it over with the officers of the E.M.A., which I did, and asked for an appointment to see Mr. Gilfillan.

Q. Did he grant it?

A. He granted it, yes.

Q. Where was the meeting held? [1113]

A. In Mr. Gilfillan's office.

Q. Who was present?

A. Otto Stegner, Carmen Fauria, Leo Pfleger and myself.

Q. And who else? A. And Mr. Gilfillan.

Q. Anyone else there? All of the people you named, other than Mr. Gilfillan, were they officers of the E.M.A.? A. Officers of the E.M.A.

(Testimony of Roy Johnson.)

Q. There was no one else there on the part of the company?

A. Nobody else was in the room at the time.

Q. Aside from Mr. Gilfillan?

A. Aside from Mr. Gilfillan.

Q. All right, will you give in substance what was said by you or any of the other E.M.A. officers, or Mr. Gilfillan?

A. The general trend of the conversation was about this letter we had received, and I found out that the company had also received a copy of that, and Mr. Gilfillan made the remark at the time, that he wasn't entering into any contracts unless he was positive he was dealing with the right party, and he said, "You want to keep the E.M.A. representing and being the bargaining agent of the people, you will have to show that you have a majority and if you show you have a majority, I will do business with you." That was the general trend of the conversation.

Q. What did you tell him? [1114]

A. I told him that in a few days I would let him know just how many members we had, as the National Labor Relations Board requested copies of names of the members of the E.M.A. at that time, and the delegates had started to collect for the March dues, and at the same time, I told the delegates to make sure that I had the names of every person that paid, so that I could turn it in to the National Labor Relations Board. And also I asked for the total amount.

Q. Did you later advise Mr. Gilfillan as to the number you had?      A. Yes. [1115]

(Testimony of Roy Johnson.)

Q. Now, since you have been president, will you state what matters you have taken up with the company in behalf of the employees while acting as president of the E.M.A.? Name those you can remember?

A. There was a question of the raise that the company and the E.M.A. petitioned the War Labor Board for the hydraulic department, which we put in effect about two months ago and several individual raises and different small departments, such as forming some, well, drill press department as to the [1118] men and women in there receiving raises, which have since come back from the War Labor Board. One petition as to the vacation with pay for this year and——

Q. I don't hear you.

A. Vacations with pay that was petitioned to the War Labor Board, and one for next year, that is to go in yet. Also, many individual cases other than the ones that I testified here for individual people. Also a question of cafeteria came up, and we tried to get the company to put a cafeteria in the place which was turned down so far. I haven't heard back from it yet.

Q. Now, did anything come up as to the vending machines in the plant?

A. Yes, the company wanted to get rid of the Coca Cola machines and candy machines at the time, because they were always empty and many people were going up to them and either trying to get their nickel back or trying to get a nickel into



(Testimony of Roy Johnson.)

it, or a piece of candy or a coke, and consequently a lot of labor was lost, and the company petitioned the E.M.A. to have them taken out. It was voted at a regular meeting and turned down.

Q. You say petitioned, what do you mean?

A. They asked us.

Q. Who? A. The company. [1119]

Q. Who for the company? A. Joe Miles.

Q. He is one of the vice-presidents of the company?

A. He is one of the vice-presidents of the company.

Q. Did you notify him that the union had voted to retain the machines? A. I did.

Mr. Esterman: I wonder if I might hear the previous questions and answers?

(The record was read.)

Q. (By Mr. Nourse) Now, when you were acting as temporary leadman, did you get any increase in pay?

A. Yes, I may have gotten a raise, yes, but just a regular raise.

Q. You weren't put up ten cents when you became leadman?

A. No, I didn't receive leadman's wages.

Cross Examination [1120]

Q. Why did you go to the A.F. of L. meeting?

A. Several people asked me to go. They asked me if I was going. First I said no, and then they said why don't I go up and hear what they have to say, so I did.



(Testimony of Roy Johnson.)

Q. Is that what you went up to hear, what they had to say? A. I did.

Q. You hadn't any intention of joining the A.F. of L. had you?

A. I didn't have any intention of not joining or joining it. I wanted to hear the proposition that they had.

Q. Why did you want to hear their proposition?

Mr. Wilson: I object. I don't think it is material what this man had in his mind at that time.

Mr. Esterman: I think it is very material.

Trial Examiner Schneider: What was the question? [1121]

(The record was read.)

Trial Examiner Schneider: You may answer.

The Witness: I am always interested in finding out how I could better myself, and if they had a better proposition, maybe I would go in with them.

Q. (By Mr. Esterman) You mean that if what the offered you at that meeting gave you a chance to get something better, or better yourself, you might join the A.F. of L. Machinists, the A.F. of L. Machinists Union? [1122]

Q. (By Mr. Esterman) I will ask you again: You thought that if they had more to offer you, you might join the American Federation of Labor?

A. It is highly possible that I would, yes.

Q. Is that what you thought at the time?

A. Sure.

Q. Calling your attention to the testimony about

(Testimony of Roy Johnson.)

the meeting with Mr. Gilfillan, you know that you and Stegner and Pfleger and Fauria attended, who said the A.F. of L. is pretty busy around the plant? Who said that?

A. I think I said it.

Q. And was that in response to some question from someone?

A. I don't remember whether it was in response to a question or just regular conversation that we were having.

Q. I want to know how it came up, how did the subject of the A.F. of L. come up? Suppose you tell me that? Who brought it up, if you remember?

A. I did.

Q. Tell me how you brought it up.

A. Well, I received a communication, a letter from the National Labor Relations Board just prior to this time, that a petition for an election was filed by the American Federation of Labor, Machinists Union. [1123]

Q. I think you misunderstood me. I don't mean why you brought it up, I mean how did it come up in this meeting? Did you say something? Did you do something? Did someone hand you something to look at, or what? I want you to tell me how it came up at this meeting? Now, what happened before?

A. During the conversation over whether or not Mr. Gilfillan would enter a contract with us, and he made the statement that we would have to show that we had enough people in our organiza-

(Testimony of Roy Johnson.)

tion and whether we have the majority of people that belong to the Employees Mutual Association before he would go into a contract with us, and that, I think, during the conversation at some time or another it was brought up. I don't remember the entire conversation that went on.

Q. You don't remember everything that was said at that meeting, do you? A. No, I don't.

Q. Some things were said there that you may have forgotten? A. Yes, it is possible.

Q. Did Mr. Gilfillan tell you why he would require that you show a majority of the employees?

A. Before he went into the contract, in drawing up this contract, we had already started to draw up this contract and the question was put to him whether or not he would sign [1124] the contract with us in view of the coming election which was supposed to take place, and he said not unless we showed we had a majority of the people.

Q. We have been over that. Did he tell you why he wanted you to show a majority?

A. I presume——

Q. Did he tell you why, not what you presume?

A. I have already stated that one time I found, when I was in the office, that Gilfillan Brothers had also received the same letter.

Q. At the time of this conversation, when Mr. Gilfillan told you that there wouldn't be another contract unless you could show him that you had

(Testimony of Roy Johnson.)

the majority, did Mr. Gilfillan tell you why he made the request that you show him you had a majority; can't you answer that?

A. Sure, if we didn't have the majority of people, why, the very fact that we were doing business with him and he was doing business with us, he wouldn't know whether it would be legal or not.

Q. Did he say that?           A. No.

Q. I want to know what he told you, if he told you anything?

A. I don't remember the exact words that he told me. I never said at this time, that I knew the exact words that he told me. This is a resume of what he said at the conference. [1125]

Q. All I want you to tell me, if you remember, is whether he told you at that time, why he would require you to show a majority? You can answer that yes or no, or that you don't remember?

A. I don't remember.

Q. You stated that you would let him know how many people were members of the E.M.A. sometime after that meeting?           A. Yes.

Q. Now, how did you let him know? First, who told him about it, was it you personally?

A. I told him personally.

Q. All right; now tell me what happened? Tell me how you told him what you said?

A. Mr. Gilfillan was making the round through the machine shop and at that time I told him the number of people.

(Testimony of Roy Johnson.)

Q. Tell me what you said to him, if you remember?

A. I don't remember the exact words.

Q. I won't expect you to remember the exact words. I want you to tell me what you remember now that you said to him?

A. I told him that we had the March dues and that we had collected so many dues from so many different people, and I told him the amount that we had collected. The amount of people that had paid dues to the E.M.A.

Q. You told him that?

A. I told him that, yes. [1126]

Q. Did he say anything?

A. I don't remember what he said. I don't remember.

Q. Did he say anything?

A. He has a very good habit of just saying "O.K." and walking away from me.

Q. He didn't discuss it with you?

A. I don't think he did, no, the conversation itself doesn't seem to bring anything to mind.

Q. He didn't ask you how you arrived at that total?      A. No.

Q. Did he ever ask you how you got that total?

A. No, I don't think so.

Q. Did he ever ask you to see a list of members?

A. No, I don't think he ever did.

Q. Now, after that, when he passed you in the shop and he said "O.K.", was the subject of the

(Testimony of Roy Johnson.)

E.M.A. having a majority brought up again before the new contract was signed?

A. I don't follow you.

Q. All right, was there any conversation on this subject of whether or not the E.M.A. has a majority, that it would be legal, as Mr. Gilfillan put it to you, did that subject come up again after this last conversation that you have just related?

A. I don't think so.

Q. It did not come up again after that time?

[1127]

A. No.

Q. You are not sure, are you?

A. I am pretty sure that nothing ever came up as to whether or not we had a majority or not. [1128]

Q. You had a meeting in February, didn't you?

A. That's right.

Q. Was the subject of raises brought up in February? [1131]

A. It was.

Q. How was it brought up, just generally?

A. Just generally.

Q. I mean, I don't want you to quote people, was it brought up by groups, people said they wanted more money and did they address themselves to you?

A. Addressed themselves to the chair, yes, and as I was presiding——

Q. They wanted to get more money and so on, isn't that right?

A. They would like to find out whether or not



(Testimony of Roy Johnson.)

the February meeting couldn't have some delegates and have a grievance committee and go ahead and have absolute grievance instead of sending a one-man committee in there and try to get raises. [1132]

Q. All right. What did you tell them?

A. Told them, "Fine."

Q. Did you say anything about a contract, about the E.M.A. contract?

A. I might have made mention there that the contract could have been reopened at any time, for negotiations. It was in the contract, to that effect.

Q. I want you to tell me what you did about the contract.

Mr. Nourse: That is what he is telling you.

Mr. Esterman: No, he didn't. He said he may have. I want to know what he said.

The Witness: I remember one meeting, I don't know whether it was the February or January meeting, it might have been the March meeting, the question was brought up as to raises and what we could do. And I said, "The contract could be reopened at any time, for negotiations." [1133]

Q. Now, you did execute, in the name of the E.M.A., an application to the War Labor Board for an increase in pay in the hydraulic department, did you not?

A. Yes; I believe it was dated in December.

Q. In December?           A. Yes.

Mr. Nourse: That is all. [1152]

(Testimony of Roy Johnson.)

Recross Examination

Q. (By Mr. Esterman) What was the nature of this document you say was executed in December?

A. It was a petition sent by the company and the Employees Mutual Association to get a raise in wages in the hydraulic department.

Q. That was in December of last year?

A. That is right.

Q. In your opinion, so far as the company is concerned, was the E.M.A. any stronger or any weaker in March of this year than it was in December?

Mr. Nourse: May I have the question, please?

(The question was read.)

Mr. Wilson: I object to that question.

Mr. Nourse: I don't even know what it means.

Mr. Esterman: All right. I meant with respect to bargaining power. [1153]

Trial Examiner Schneider: Do you mind rephrasing the question. Mr. Esterman? I am not sure exactly what you mean?

Mr. Esterman: Well, I will withdraw it.

Q. (By Mr. Esterman) Did you ever tell Mr. Ogran of this office that the E.M.A. was not responsible for negotiating the revamping of the company's wage structure because it wasn't strong enough?

A. There were words very similar to that. He rewrote it in that type.

Q. You tell me what you told him? Tell me what you remember?

(Testimony of Roy Johnson.)

A. Well, Mr. Ogran put the question to me that in my opinion was the E.M.A.—am I referring to the right thing when I say E.M.A.—he said why did the people come out to the meetings after February, in the March meeting and——

Q. I don't know whether you are trying to lead me astray or not, Mr. Johnson. I asked you whether you had told him that, and you said something very similar, and since you intimate it wasn't quite the same thing, I would like to have you tell me what you did tell him?

Mr. Nourse: I am going to say for the benefit of counsel, that I don't understand. I couldn't understand from your question what it was the witness was purported to have said.

Mr. Esterman: He understands it, and he says that he [1154] made a statement like that, and since it isn't exactly his statement——

Trial Examiner Schneider: Will you read Mr. Esterman's question, and the witness' answer?

(The record was read.)

The Witness: I would like to explain it myself. I explained to Mr. Ogran that I went into Mr. Sparks personally, myself, as a committee of one, and there wasn't a regular grievance committee. He asked me if there wasn't a regular grievance committee to come in and I said, "No." I said the E.M.A. grievance committee wasn't functioning because the following month, or not the following month but a short time after that, which was a month or so after that, a new grievance com-

(Testimony of Roy Johnson.)

mittee was elected in there. So, I went in myself and then he said, the E.M.A. did not negotiate the wage structure and I said No. That was the gist of the conversation. But, I asked for the raise and I think Mr. Ogran acknowledged it in the writing, because when he read that to me prior to signing that page, why I questioned it. He said, "I will go further to explain."

Q. (By Mr. Esterman) Did you say anything to him about the E.M.A. not being strong enough to negotiate the wage revamping?

A. I don't believe I said it in those terms.

Q. Do you think it was strong enough at that time, last December? [1155]

A. (No response.)

Q. You are the president, aren't you?

A. Yes, if we want to put it, but at the present time, I just explained we didn't have a grievance committee working at that time, and previously right after that, we elected a grievance committee.

Q. You mean you weren't strong enough because you didn't have the committee set-up, the organizational set-up?

A. Yes.

Q. Don't take my word for it, if you mean something else?

Mr. Nourse: I submit that counsel asks a question, and when the witness starts to answer, then counsel goes on.

Mr. Esterman: I let this man address me for hours today on questions I never asked him. I get

(Testimony of Roy Johnson.)

a little tired of his wandering, and he certainly has wandered.

Mr. Nourse: I don't think so.

The Witness: I will try to answer your questions as you put them to me.

Trial Examiner Schneider: There is, I think, a question pending. Will you read it?

(The record was read.)

Trial Examiner Schneider: Proceed, Mr. Esterman.

Q. (By Mr. Esterman) I will ask again: Because you didn't have the organizational set-up, that is with respect to grievance committee, or any other similar committee, you felt [1156] you weren't strong enough to make the demands on the company, is that right, or isn't it?

A. No. I didn't feel like—I didn't want to make the demands. I did make the demand on the company that had been looked into, but I didn't have an organization grievance committee at that time. If you notice that in February, when we elected a grievance committee, any one of which when elected you could choose four people and make a working committee of it. [1157]

#### Further Redirect Examination

Q. (By Mr. Nourse) When were the wage scales of the company revamped?

A. Around January 10th.

Q. Classification and wage scales for all the employees, when were they revamped?



(Testimony of Roy Johnson.)

A. Prior to May 1, we went in to start negotiating then.

Q. Who took part in that? You have had shown to you Exhibit A of the contract of 1943, Board's Exhibit 12, who took part in fixing those wage scales and classifications there?

A. The delegates, there is a delegate elected in every department. [1158]

Q. (By Trial Examiner Schneider) I believe you testified that a committee of the E.M.A. had a meeting with Mr. Gilfillan in his office, and at that time Mr. Gilfillan stated that he would not do business with anybody, or rather that he would not do business with the E.M.A. until he found out it represented the majority of the plant? Wasn't there such a discussion? A. Yes.

Q. Can you give the approximate date of that?

A. Right after March 6th.

Q. Right after March 6th?

A. Yes, just a few days, because I didn't receive that letter until March 6th, and I think this was a couple of days after that.

Q. Subsequent to that, I believe you also testified you met Mr. Gilfillan in the shop, and you gave him, or you told him the number of employees who had paid dues in March? [1160]

A. Yes, in March.

Q. About what date did that happen, if you recall?

A. I think I testified it was a few days after the meeting that the Employees Mutual Association had with Mr. Gilfillan.



(Testimony of Roy Johnson.)

Q. It was just a few days after the meeting?

A. Yes.

Q. Was it a week?

A. Yes, it was within the week. [1161]

Trial Examiner Schneider: Yes. I hand you, Mr. Johnson, Trial Examiner's Exhibit 2, and ask you if that is the agreement between Gilfillan Brothers and the Employees Mutual Association made April 24, 1942?

The Witness: Yes.

Trial Examiner Schneider: Trial Examiner's Exhibit 2 may be admitted into evidence.

(Whereupon, the document, heretofore marked for identification as Trial Examiner's Exhibit No. 2, was received in evidence.)

## TRIAL EXAMINER'S EXHIBIT No. 2

Agreement Entered Into Between Gilfillan Bros. Inc. and the Employees Mutual Association

This Agreement, entered into this day by and between the Employees Mutual Association, hereafter called the E.M.A., and Gilfillan Bros. Inc., hereafter called the Company, all of Los Angeles, California

Witnesseth:

### Article I.

#### Section 1—

From and after the 26th day of April, 1942 and for a term of one year ending on the 30th day of April, 1943, the Company agrees to employ only in its plant or plants, hourly rated employees who

(Testimony of Roy Johnson.)

are or shall become members of the EMA, provided that all present employees and or any employees who have been on the Company payroll at some time during the year prior to the signing of this contract and who are reemployed within 90 days after the signing of the contract, shall become members of said E.M.A. without coercion on the part of the Management.

Section 2—

The Company agrees to establish a rule which shall be incorporated in an employment agreement to the effect that all new employees after a four weeks' trial, shall become Members of said E.M.A.

Section 3—

The Company agrees to recognize said E.M.A. as the sole collective bargaining agent for all hourly rated employees.

## Article II.

Section 1—

The Company agrees to establish a minimum wage in all departments for women of 50c per hour and a minimum wage for men of 60c per hour.

Section 2—

The rates of pay for hourly workers in all departments shall be based on standards in existence at the time this contract goes into effect. Changes in these standards may be negotiated by either party as conditions warrant it.

Section 3—

The Company agrees to allocate work and give

(Testimony of Roy Johnson.)

promotions on a basis of departmental seniority wherever possible and if all other things such as aptitude and ability are equal.

Section 4—

Because of changing economic conditions, it is understood that negotiations for changes in wages may be re-opened by either party at any time.

Section 5—

The Company agrees to the following changes in rates: These rates are to be put into effect April 26, 1942: All hourly rated employes, with the following exceptions and conditions, will receive a 5 cent per hour increase. These increases are to be based on rates in effect as of April 2nd, 1942, with the understanding that no rates in effect as of April 26, 1942 will be lowered. Any employee in the Burring Department who is classed as a buffer or a sander will receive a 10c increase, instead of 5 cents. All Automatic Screw Machine operators will receive 10c per hour increase instead of 5c per hour. The bonus which has been paid to the employees of the Machine Shop will be discontinued and its equivalent will be added to the hourly rate.

Section 6—

The lead men in the Machine Shop are to receive at least 15c per hour more than the top men employed under their supervision.

Section 7—

The number of hours to be worked per shift is to be determined by the volume of orders and ma-

(Testimony of Roy Johnson.)

terial available and to conform to the request of the Federal Government as to working hours per shift.

It is the prerogative of the Company to hire and discharge employees as they see fit and to have complete control over the lead men as to their selection and working conditions.

### Article III.

This document constitutes the entire written agreement between the E.M.A. and the Company and both the E.M.A. and the Company here state that there are at the time hereof no labor disputes between the E.M.A. and the Company, and it is further understood that no further demands shall be made by either party during the term hereof, and that no change may be made herein, without the written consent of both parties hereto.

### Article V.

This agreement shall be and remain in force the  
one  
period of ~~two~~ years from date hereof and shall expire on 30th of April, 1943.

(Testimony of Roy Johnson.)

In witness hereto, the parties have hereby set their hands this 24th day of April, 1942.

Signed by:

/s/ ALBERT ZAPF

/s/ L. M. PFLEGER

/s/ LILIAN V. CORNELL

Representatives E.M.A.

/s/ ALFRED L. ASKEY

/s/ LEROY HALLORAN

/s/ ROY JOHNSON

/s/ L. GIAUNIN

/s/ S. W. GILFILLAN

Gilfillan Bros. Inc.

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Trial Examiner Schneider: Is there anything further of the witness?

That will be all, Mr. Johnson. Thank you.

(Witness excused.)

Mr. Nourse: Mr. Straw.

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FLOYD W. STRAW,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nourse) State your full name, please.      A. Floyd W. Straw.

Q. Where do you reside?

(Testimony of Floyd W. Straw.)

A. 5826 Virginia Avenue. [1166]

Q. What is your business?

A. Why, I own vending machines

Q. How long have you been in that business?

A. About 12 years.

Q. Do you remember the Gilfillan fire?

A. Yes, sir.

Q. Did you have any machines in the Gilfillan plant before the fire?      A. Yes, sir.

Q. What kind?

A. I had a cigarette machine at the entrance.

Q. Anything else?

A. I used to have a couple of peanut machines, at one time, but I took them out.

Q. Now, before the fire, who did you make your arrangements with to put them in there?

A. I just stuck them in.

Q. What is it?

A. I just stuck them in there.

Q. Just stuck them in there?      A. Yes.

Q. You didn't make any arrangements with anybody?      A. No, just walked in.

Q. Just took them in?      A. Yes. [1167]

Q. Did you pay any commission to anybody?

A. No.

Q. After the plant was rebuilt, and after the fire, did you go in to put them in again?

A. Yes, sir.

Q. And did you try to stick them in then?

A. Yes, sir.



(Testimony of Floyd W. Straw.)

Q. And what were you told?

A. I come down, I wanted to put the cigarette machine in. They told me I would have to see Walter Scheid, over on the machine.

Q. Do you remember who told you to see Scheid?

A. Well, I went in and I says, "I wonder where I will put these machines."

One of the fellows says, "See Walter Scheid, he has the say of it."

Q. You can't name the individual that said that?

A. No; no. One of the workmen in there.

Q. All right. When you got over to see Scheid, what occurred?

A. I asked him where I would put the cigarette machine. He told me to put it over near the door. And I says, "How about putting a candy machine in, too?"

He says, "Well," he says, "the fellow that has the candy machine in the other building pays the Association commission." [1168]

"Of course," I says, "if he will, I will."

He says, "If you want to pay a commission, you can put the candy machine over by your cigarette machine." So I put it there.

Q. All right. Now, was anything said at that time as to how and to whom you would pay the commissions? A. Well, he said——

Q. I mean at that time, at the time of your first conversation.

A. He said it went to the Association.

(Testimony of Floyd W. Straw.)

Q. All right. Did you have another conversation with Scheid relative to the payment of these commissions?

A. About the time I was ready to pay a commission, I says, "Who will I pay this to?"

He says, "It is kind of hard to find me, I work nights and days." He says, "You better take it to Gilfillan and he will refund it back to me."

I go in there sometimes mornings, sometimes afternoons, and one officer is on one time and I don't know one from two. I suppose he figured that is the best way to get along.

Q. Since that time have you carried out that arrangement?      A. Yes. [1169]

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CHESTER JOEL CRAMER,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nourse) What is your full name?

A. Chester Joel Cramer.

Q. And where do you reside?

A. 5183 West 20th Street.

Q. What is your business or trade?

A. I am superintendent of the machine shop at Gilfillan's.

Q. Are you a machinist by trade?

A. Yes.

(Testimony of Chester Joel Cramer)

Q. How long have you been with Gilfillan Brothers in that capacity?

A. In what capacity—you refer as machinist——

Q. As superintendent.

A. A little better than two years. I am not exact without looking up the records. [1173]

Q. I want to call your attention to some testimony given here by one George Nelson. You knew him, did you? A. Yes.

Q. He stated that some time in January, and on a day of an E.M.A. meeting, he asked you if it was necessary for the employees to go over to the E.M.A. meeting, and that you said personally as an official of the company, "I can't say anything but they should all go over there." Did you say that to George Nelson? A. I probably did.

Q. Will you tell your words on what you stated and said?

A. At different times I have been asked should they go to the meetings. I will say in my capacity at the shop, I could not advise them anything. Personally, if they expected to get any benefit from any association, they should forfeit something to it. Therefore, I think that they should go to it.

Q. (By Mr. Nourse) Did you say to him that they should go over there in a body, and that they might get a raise out of it and keep some other union from coming in? [1179]

A. Not that I recall, no.

Q. Would you ever remember saying that to anyone? A. No.

(Testimony of Chester Joel Cramer)

Q. They were turned loose in the shop and they could either go home or stay at work or go to the meeting or whatever they wanted to do?

A. There was no body movement to my knowledge.

Q. I didn't ask you if there was a body movement. I asked you if you said to Mr. Nelson, or to anyone in Mr. Nelson's presence, that the employees should go over there and to quote him, "He said," meaning you, "to go over there in a body and they may get a raise out of it and keep some other union from coming in on them." Did you make such a statement to Mr. Nelson or anyone else?

A. I don't think so.

Q. Did you ever recall making any such statement?      A. No.

Q. Or any statement in substance relative to the meetings, than that which you have testified to?

A. No. [1180]

Q. Now, what are your duties as superintendent in the plant?

A. Well, my duties are to oversee the shop; to try to settle the questions which cannot be settled by the general foreman and to carry out the requests of the management, whatever they might be. Just to see that the plant runs in general.

Q. Now, to whom in the plant can complaints about the workmanship of people come to? Who has charge of discharging in the plant? [1181]

A. Mainly I do.

(Testimony of Chester Joel Cramer)

Q. Now, if a lead person, man or woman, comes to you and says, "Well, Joe Doaks on my machine isn't keeping up with the work, or wouldn't lubricate the machine right, or he is slowing down," what would you do? He comes to you with any complaint about anyone under him?

A. I look around and see what I think about him.

Q. What do you do? How do you look around?

A. I go and investigate their workmanship and the amount of pieces that they make all the way through, and get both sides of the story.

Q. Now, on those occasions after doing that, you discharged people the lead man or woman complained about?

A. Yes.

Q. What have you done in other occasions.

A. On other occasions I leave them right where they are, and on other occasions I change them to other shifts and sometimes even different work.

Q. Now, will you give me your definition of a leadman or leadwoman there in the plant?

A. I don't know, the leadman of today is the average workman of three years ago, in my opinion.

Q. Take the drill press for instance. What does he do there? Tell what his work is? What his duties are? What his responsibilities are? [1182]

A. Well, the foreman gives him the jobs. He goes to the crib, and gets the drills, reamers or taps or whatever he needs to set the job up. He sets it up and on the drill press, runs several pieces, as many as he sees fit to run to see if it is running cor-



(Testimony of Chester Joel Cramer)

rectly, and gets it inspected, and then puts a workman on.

Q. Now, is that on each machine in the plant or can you add anything to that on other machines?

A. In general that would cover all of them. The only thing I left out there, he instructs the party. When I say to put them to work on it, he physically shows them exactly how to do it.

Q. Now, is that true—say, you can get an experienced drill press operator. What does the leadman have to do in regard to him?

A. If I can get one good enough, he sets his own jobs up. The leadman checks his parts when they first come off to see that they are set up right, and lets him go with it and every so often he goes back and checks it again to see if it is still running correctly.

Q. Does he do that irrespective of how experienced the man is?

A. Yes, because everyone makes mistakes, even the best of them.

Q. Now, you worked in machine shows before the present [1183] emergency, did you not?

A. Yes.

Q. You didn't have leadmen then, did you?

A. No.

Q. Each man inspected his own work, didn't he?

A. You didn't need a leadman. You had experienced men you could depend on.

Q. What you mean to say, you can't get the



(Testimony of Chester Joel Cramer)

men now that are experienced enough so you can leave them to check their own work?

A. That's right.

Q. Do any of the leadmen actually work?

A. Yes.

Q. I mean in addition to setting up the machines and laying it out and running off the first number of pieces on each one, do they operate machines?

A. We have done that when they have time, yes.

Q. Now, in what department is that constantly done?

A. In the automatic department. The man is more or less responsible for two machines. That is an average all through the department, and then the leadman is also responsible for two. Not any particular two, but just enough——

Q. On automatic screws, isn't it true that the leadman has the first two machines running from south to north?

A. Not any particular two. [1184]

Q. He may pick any two he wants on the line?

A. That's right. The two that give the most trouble generally.

Trial Examiner Schneider. And he operates those?

The Witness: Yes.

Q. (By Mr. Nourse) Who are the foremen under you?

A. In the day shift there is Harry Whittet, night shift is Al Walters, on the relief shift is Walter Scheid.

(Testimony of Chester Joel Cramer)

Q. What are their duties, and what do they do?

A. Their duties is to see that the plant runs when I am not around, and also when I am around, as far as that goes. When they get in any trouble they come to me. They go all around the plant, pick up parts, look at it, if they see a man that is having trouble they are to help him. They are just free to go to any part of the shop and correct anything that doesn't look right to them.

Q. When you say they are free, is that part of their duty?      A. That is their duty.

Q. Is there a central place where you stay when you are not around the floor?

A. I never have any time to stay at any central place, but we have a central place, what we call a desk in the middle of the shop, where we go when we have any prints to study, or jobs to discuss or tools to lay out, and we generally collect there at that desk and discuss them. [1185]

Q. And that is in full view of all the workmen and leadmen there? So that, anyone who wants to reach you can do it at any time?

A. It is as near the middle of the shop as you can get.

Mr. Nourse: That is very leading, but I think the Examiner has been there and seen it. [1186]

#### Cross Examination

Q. (By Mr. Esterman) Who was the foreman of the relief shift?

A. Walter Scheid. Are you referring to now or then?

(Testimony of Chester Joel Cramer)

A. Who is now?           A. Walter Scheid.

Q. How long has he been foreman of the relief shift?

A. The exact date I couldn't tell you.

Q. Approximately?

A. On the records——

Q. I want to know what your recollection is, a year or two years or six months?

A. Approximately four months.

Q. Four months? [1187]

A. I really don't remember but that is as near as I can get.

Q. What was he doing before that?

A. He was the leadman in the automatics in the night shift.

Q. Do you know how long he held that job?

A. I would say well over a year.

Q. Is that the job he started on or had he done something before that?

A. He has worked for the company, I would say, around 12 years.

Q. What did he do before he became a leadman on the automatics?

A. He was an automatic operator.

Q. I think you said, Mr. Cramer, that the matter of these people going to the E.M.A. meetings was brought up to you several times, is that correct?

A. That's right.

Q. Suppose you tell me what you were asked? What came up generally with respect to the meeting?

(Testimony of Chester Joel Cramer)

A. There was a bulletin posted on the bulletin boards when there will be meetings. People would come to me and say, "Do we have to go?" "Should we go?" "Are you going to shut down the plant and make us go?" They asked all kinds of questions about it.

Q. So that you were engaged in conversations about these E.M.A. meetings quite a bit just before the meetings were [1188] scheduled?

A. I would say within three hours of the meeting, I was flooded with questions.

Q. And you don't remember everything that you said at these various times, do you?

A. I should say not. [1189]

Redirect Examination

Q. (By Mr. Nourse) Mr. Scheid took Mr. Hoene's place as foreman on the swing shift, didn't he? A. That's right.

Mr. Nourse: I think it appears on the record that Mr. Hoenes left February 4, 1943.

Mr. Esterman: Took his place as what?

Mr. Nourse: Took his place as foreman on the swing shift.

Mr. Esterman: I see. Thank you.

Mr. Nourse: You were asking him when Scheid became foreman and I am fixing the date for you.

Mr. Esterman: Thank you.

Q. (By Mr. Nourse) When anyone asked you if they had to go to a meeting, what did you tell them? A. They did not. [1190]

(Testimony of Chester Joel Cramer)

Q. (By Trial Examiner Schneider) As I understand your testimony, if you had competent operators you would have no need for leadmen, is that correct?

A. That's right.

Recross Examination

Q. (By Mr. Esterman) Do you remember any cases, Mr. Cramer, where a leadman complained about people and you looked into it, and after you looked into it, they stayed where they were?

A. I can say there have been several cases. As for naming [1191] one, I don't know whether I can or not.

Q. That was going to be my next question. I was going to have you try to recall one for us.

A. I have one right now. [1192]

Q. One that just happened? A. Yes.

Q. Tell us about it.

A. A fellow by the name of Kletting.

Q. What does he do?

A. On the milling machines.

Q. Who is his leadman?

A. Eustace Hall.

Q. You had a recommendation with reference to this fellow from Mr. Hall, is that right?

A. That is right.

Q. What did you do about it?

A. I left him there.

Q. When was it you got this recommendation?

A. About three days ago.

Q. What was the recommendation?

(Testimony of Chester Joel Cramer)

A. That the man wasn't satisfactory to him. He recommended, through his foreman, Walter Scheid, that I should let him go.

Q. Hall recommended that?

A. That is right, through Scheid, the foreman.

Q. Who came to you, Scheid or Hall?

A. Scheid. It originated from Hall. I think that is what you want brought out, isn't it?

Q. Well, Scheid is not a leadman, is he?

A. Scheid is the foreman. [1193]

Q. Do you have any other cases in mind, other than this one? A. Not that I can recall, no.

Mr. Nourse: By that you mean that he can recall the names of? Is that what you meant, Mr. Esterman?

Mr. Esterman: Well, all right, say I mean that.

Q. (By Mr. Esterman) Do you have any other cases, similar cases, where you have left a man on the job, where you can recall, who is involved, or was, rather? A. Yes.

Q. Can you recall what machinery those cases involved, what department in the machine shop?

A. The drill presses.

Q. When did this happen, approximately?

A. That was under Mr. Nelson.

Q. How long ago?

A. I couldn't answer that.

Q. At least, while he was there?

A. Yes.

Q. What was his capacity when he was there?

A. He was a leadman.



(Testimony of Chester Joel Cramer)

Q. Did it involve a man or a woman?

A. Woman.

Q. I beg your pardon?

A. Involved the girls. [1194]

Q. He complained about her and said her work wasn't adequate?

A. Yes.

Q. Then what happened?

A. When I investigated it her work was just as good as the rest of them, in several cases; he didn't like to work with them.

Q. Did he make any particular recommendation to you? Or did he make any request of you with respect to that girl? Or did he just complain about her, or what did he tell you?

A. Just a matter of complaining.

Q. Tell me what he said to you.

A. I didn't see him the most of the time, on his complaints, because he leaves there before I come in in the morning.

Q. Who made the complaint about this girl?

A. The foreman.

Q. Who was that?

A. Likely to be one of two persons, either Al Walters or Walter Scheid, as both of them have jurisdiction over the shift that he is on, due to the way our shifts overlap each other.

Q. What you are telling me is that in the case of these foremen, Scheid or Walters,—he is the other one you mentioned?

A. Walters, yes, sir. [1195]

(Testimony of Chester Joel Cramer)

Q. That they might make a recommendation and yet you might not follow it, is that right?

A. That is right.

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WALTER SCHEID,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nourse) What is your full name?

A. Walter Scheid.

Q. Where do you live?

A. In Los Angeles. The address?

Q. The street number.

A. 730 West 109th Street.

Q. Are you employed by Gilfillan Brothers?

A. Yes.

Q. Since what date? [1196]

A. I can give you the approximate month: April, 1933.

Q. Now, do you remember when the plant reopened? Do you remember when the plant reopened after the fire? And they got the new turret lathes in? You remember that occurrence, don't you?

A. I do, I remember that.

Q. Now, were you then a member of the E.M.A.?

A. Yes.

Q. Were you an officer in it?

A. No, I wasn't.

(Testimony of Walter Scheid.)

Q. Have you ever been?

A. No, I never was.

Q. In what capacity did you start to work when the plant reopened, after the fire? What was your job?

A. Leadman on the automatics at night.

Q. Leadman on the automatics at night. Now, about the latter part of June or early part of July, 1941, do you remember the occasion of an E.M.A. meeting at which you attended, in which the matter of commissions from sales of vending machines was taken up?

A. Yes.

Q. Would you tell what occurred?

A. Somebody brought up the subject that there ought to be some type of vending machine in the shop, supplying the workers with a cool drink. And somebody suggested I be a [1197] committee of one, and they all agreed on it, and I guess I was nominated; appointed.

Q. Was anything discussed besides drinks, or was it just drinks that was discussed then?

A. Drinks mostly.

Q. Did they speak of other vending machines, if you recollect?

A. No, not that I recollect.

Q. All right. And were you appointed to do anything at that meeting?

A. No, I wasn't.

Q. What was it? A. No, I wasn't.

Q. Well, were you later asked to do anything about vending machines?

(Testimony of Walter Scheid.)

A. No, they didn't ask me to do anything. They just—in the first meeting they just wanted somebody to handle the job of getting a vending machine in the machine shop.

Q. Well, who did they ask to do that?

A. They appointed me, but they didn't ask me to do anything.

Q. Oh, I see. And when they appointed you, what did you do?

A. Well, after that I spent several days traveling around town looking up the different vendors, and asking about machines, different types of machines. [1198]

Q. Did you contact some soft drink people?

A. Oh, yes; several of them.

Q. Did you make any arrangements with any of them to put a machine in?

A. Yes, I finally made arrangements with one company to have a machine put in.

Q. What was the arrangement that you made?

A. Well, I asked him how they arranged the proceeds or profits on the machine, and they said that a certain percent of the sales went to the—well, as they called it, the renter of the machine. The machine was more or less rented out. They got a certain percent. I forget now what percent it was. I don't recollect them asking me there, at the plant, who the money was to go to, but later on the serviceman for the machine, that kept the machine supplied with drinks, he asked me—I saw him

(Testimony of Walter Scheid.)

one night there and I told him to make the check out to the E.M.A., and he asked me who the E.M.A. was. And I told him it was the Employees Mutual Association. And he says, "Who are they?" And I told him it was the union of the company, Gilfillan Brothers.

And he said, "Well, do they have a checking account, something we can send a check to?"

I said, "Not to my knowledge, they don't."

"Well," he says, "supposing we just send the check to Gilfillan Brothers and they, in turn, can turn it over to [1199] whoever they want. That is the way we usually handle it in other cases."

Q. That is what he said?           A. Yes.

Q. What did you say?

A. I said, "That is O. K., just so we get the pop."

Q. Did you contact anybody in the company about that? That the money was going to come in and that these machines were going to be put in?

A. Yes, I told Mr. Miles about that.

Q. Mr. Joe Miles?           A. Mr. Joe Miles.

Q. Did he make any objection?

A. No, not a bit.

Q. Then do you remember anything about candy machines?

A. Yes. One day a Mr. Straw came in, and I happened to be there, and somebody referred him to me about putting a candy, gum and cigarette machine in. And we talked about it, and I asked him how much profit he paid, the percent he paid.



(Testimony of Walter Scheid.)

He told me, but I forget. Then we agreed on one candy machine, with a gum machine on the side, and one cigarette machine, in the machine shop. And he asked me about the money then, and I told him to just make out the check to Gilfillan Brothers and they would, in turn, turn it over to the E.M.A., because we made that arrangement with the soft drink company. [1200]

Q. At any time have you had to take up with either the soft drink people or the candy people the fact the machines weren't full or weren't operating?

A. Yes, I called the soft drink people up several times because the machine wasn't functioning right, and also there were no drinks. And the candy machine, I don't think I called them up. I saw him one night and I mentioned the fact that the machine had refused to pay out the candy when the nickel was inserted in the machine. That is all I said to Mr. Straw.

Mr. Nourse: That is all.

Cross Examination

By Mr. Esterman:

Q. Did you ever resign from the E.M.A.?

A. Resign?

Q. Yes. A. No, sir.

Q. When was the last time you called up about one of these machines, that is, had something done to it, fixed it when something was wrong with it?

A. That was——

Q. Quite a while ago?



(Testimony of Walter Scheid.)

A. Quite a while ago, too long for me to remember.

Q. Do you remember where you called from?

A. I called from the plant several times, and I called from home. [1201]

Q. You called from the plant. Where did you call from?

A. Oh, let's see, they have a phone there for the guard, and I used that phone.

Mr. Esterman: No more questions.

#### Redirect Examination

By Mr. Nourse:

Q. Now, you became foreman on the swing shift early this year, didn't you? A. Yes.

Q. Do you remember the date?

A. I believe it was the 7th of February.

Q. Now, since that time have you paid dues and been a member of the E.M.A.?

A. No, I haven't.

Q. When you said you hadn't resigned, you meant you hadn't given them any formal resignation, is that it? A. That is right.

Mr. Nourse: That is all.

Mr. Wilson: No questions.

Mr. Esterman: No questions.

Q. (By Trial Examiner Schneider): Mr. Scheid, the E.M.A. meeting at which the question of securing the soft drink machine for the machine shop was discussed, was sometime in June or July of 1941? A. I don't recall the date.

(Testimony of Walter Scheid.)

Q. You don't recall the date? [1202]

A. No.

Q. You don't know whether it was spring or summer?      A. I believe it was summer.

Q. Was that before or after Mr. Straw had discussed with you the matter of putting some machines in, cigarette machines and so forth?

A. It was before.

Q. The meeting was before you talked to Mr. Straw?      A. Yes. [1203]

Mr. Esterman: I have no more questions.

Mr. Wilson, will you please have that sheet brought in tomorrow? I am referring to the list of people who paid dues to the E.M.A. in March, 1943.

Mr. Wilson: I will ask Mr. Johnson to bring them in with him tomorrow morning.

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MARGARET GOEBEL,

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nourse:

Q. Where do you live?

A. 2228 $\frac{3}{4}$  West Fifteenth Street.

Q. Mrs. Goebel, do you know Myrtice De Shazo?

A. Yes.

(Testimony of Margaret Goebel.)

Q. Did you state to her on the evening of the January meeting, or on the evening of the December meeting of the E.M.A., or at any other time, that attendance at the E.M.A. meeting was compulsory or that she had to go?

A. No, sir. [1207]

Cross Examination

By Mr. Esterman:

Q. Do you remember whether you had any conversation with Ella Richardson about the January E.M.A. meeting? A. No, I don't.

Q. Do you think you might have?

A. No, not just about meetings special.

Q. I didn't hear that.

A. No, not just about meetings special. We talked a lot. We were together a lot, but I don't remember just talking about meetings.

Q. Well, do you remember whether or not you had any conversation with Ella Richardson just before the January meeting? A. No, I don't.

Q. Do you think you might have talked with her then? A. I don't know. [1210]

Q. Do you know whether you had any conversation with Ella Richardson just before the February meeting? A. No.

Q. Is your answer that you don't remember? My question is whether you remember if you had any conversation with her.

A. No, I don't remember.

Q. Might you have talked with her at that time?

A. I might have, yes. [1211]

(Testimony of Margaret Goebel.)

Mr. Wilson: While we are talking about Mr. Johnson, may the record show I have handed Mr. Esterman the list of names of the E.M.A. members, as per his request of yesterday. [1226]

Mr. Nourse: While we are on the subject of stipulations, Mr. Esterman has stated to me, off the record, that he [1227] is willing to stipulate, for the purpose of the record and into the record, that both he and Mr. Ogran, Mr. Ogran prior to the filing of the complaint, during his investigation, and that Mr. Esterman, afterwards, were given every opportunity to examine and confer with the employees of the Gilfillan Brothers, to go into the records, and that all and every facility was turned over to them to permit them to carry out their investigation. Is that right?

Mr. Esterman: I will so stipulate. [1228]

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IRVIN B. SPARKS,

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Mr. Nourse: Will you mark these as Respondent's Exhibit 25, please. [1257]

Q. (By Mr. Nourse): I show you Respondent's Exhibit 25, for identification, consisting of nine sheets, and ask you if those are true photostatic copies of the clock, or true photostats of the clock cards of Myrtice W. DeShazo for the period from

(Testimony of Irvin B. Sparks.)

the week ending January 2, 1943, to the week ending February 27, 1943. A. They are. [1259]

Mr. Nourse: I now offer this as Respondent's Exhibit No. 25. [1260]

Mr. Esterman: Will you look at the card, then, for the week ending January 9, the first column, Monday, where the time punched in is rather faint, 14-19.

Mr. Nourse: That is 14 hours and 19 minutes.

Mr. Esterman: Right above that, apparently much fainter, apparently in pencil, "Meeting 1 hour"—is there any disagreement as to that meaning?

Mr. Nourse: MTG, I don't know what it means.

Mr. Esterman: Will you stipulate that signifies a deduction of one hour's pay for attending an E.M.A. meeting [1261] that date, being January 4th?

Mr. Nourse: January 4th?

Mr. Esterman: Monday would be January 4th.

Mr. Nourse: Yes, I think that is what it is.

Mr. Esterman: You so stipulate?

Mr. Nourse: Yes. I will stipulate that everyone we could catch was docked.

Mr. Esterman: I have no objection to this Exhibit, but I am curious to the purpose.

Mr. Nourse: Do you want to know the purpose?

Trial Examiner Schneider: Yes.

Mr. Nourse: To corroborate and substantiate the other record in, and to show that this woman wasn't in the plant or at work when she did the thing she

(Testimony of Irvin B. Sparks.)

testifies she did as to union activities, which are very definitely in the record, as to the time she says she did them; and that when she sent in her card to the A. F. of L., authorization card, she was out, and out for a long time after that. [1262]

Trial Examiner Schneider: It may be received.

(Thereupon, the document heretofore marked for identification as Respondent's Exhibit No. 25, was received in evidence.) [1263]





194

NAME \_\_\_\_\_

Thyriste W. LeShazo

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NAME

Myrtice W. De Shazo

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Weekly Totals

TOTAL WAGES FOR WEEK \$

PRESS OF L. C. CORPORATION, INDIANAPOLIS, IND. U.S.A.



WEEK ENDING *Jan. 16, 1943* 194...

No. *266*

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Daily Totals	Weekly Totals

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TOTAL WAGES FOR WEEK \$

PRINTED BY E. M. CORPORATION, ENCLIFF, N. Y. U.S.A.

WEEK ENDING *Jan. 23, 1943* 194...

No. *266*

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Daily Totals	Weekly Totals

*Absent*

RATE

No. 0080 F P

TOTAL WAGES FOR WEEK \$

PRINTED BY E. M. CORPORATION, ENCLIFF, N. Y. U.S.A.



WEEK ENDING

JAN 30 1943

194

No. 266

NAME

Myrtice W. DeShazo

Absent

Daily  
Totals

Weekly Totals

RATE

No. 6080 F. P.

TOTAL WAGES FOR WEEK \$

PRESS OF I. B. CORPORATION, ENDICOTT, N. Y., U.S.A.

WEEK ENDING

FEB 6 1943

194

No. 266

NAME

Myrtice W. DeShazo

Absent

Daily  
Totals

RATE

No. 6080 F. P.





266. Myrtico. W. De Szabo

FEB 13 1943

194...

2  
WEEK ENDING FEB 20 1943 194

266 Myrtice. W. DeShazo

NAME \_\_\_\_\_

48 hrs 350  
80x 292  
3796

3796

TP 1412 W 1421 TH 1428 FR 1418 SA 1416

TH B03 SA B032  
TU B03 W B04 TH B04 FR B03 SA B07

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ΣB04 I<sup>2</sup>B03 > B04 I<sup>2</sup>B03 ER B08 SA B06

Only  
1 day

RAIF

No. 6 f 13

TOTAL WAGES EC : WEEK 5

FRIENDS OF THE UNIVERSITY OF ALABAMA



194

No. 266 Myrtice W. DeShazo  
NAME

24. 584

Σ 1405

**ΣΒΜ**

## CASE PRESENTATION

YIP T NO. 25

IN THE NAME OF THE LORD,

Giffell Bros

DATE 7-16-43

Sports

9/10

ETHEL E. L. ...

## Opt. Reporting

BY *Virginia Dickering*



(Testimony of Irvin B. Sparks.)

Mr. Nourse: All right. Mr. Esterman, the Examiner has made a suggestion that rather than put in these letters it be stipulated that both Gilfillan Brothers and the E.M.A. were notified, in writing, by the National Labor Relations Board, Twenty-first Region, February 27, 1943, that a petition had been filed with the Board by the International Association of Machinists, Lodge 311, A. F. of L., alleging that a question of representation had arisen concerning a unit consisting of the following employees of the company: All machinists, production and maintenance employees, excluding all other employees of the company.

Mr. Esterman: I will stipulate to that. [1266]

---

MRS. MYRTLE M. VOLZ,

a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nourse:

Q. Mrs. Volz, you have handed me a document, consisting of four sheets, the first of which is headed "Gilfillan Applications" showing duplicates?

A. That is—— [1267]

Q. You mean that that shows where the authorization cards were duplicated by following applications? A. That is right.

Q. So that wherever there is an application on



(Testimony of Myrtle M. Volz.)

the same line with authorization they refer to the same person?      A. Yes, sir.

Q. And each date put down represents a person?

A. Yes, sir.

Q. On the second sheet, "Gilfillan Transfers", those show the number of employees in the Gilfillan plant or show the names of the persons in the Gilfillan plant who transferred from other A. F. of L. unions to your union during January and February of 1943?      A. Yes, sir.

Q. And all the persons who transferred?

A. Yes. [1268]

Q. The next sheet, which is headed "Authorization Cards No Applications" gives the number and date. Each date represents an application?

A. Yes, sir. Each date represents an authorization.

Q. An authorization, rather. These persons who are represented by these—I mean from those cards, these were taken, did not later make applications?      A. That is right.

Q. And the last one, the next sheet is the same but merely carrying that forward.

A. Yes, sir.

Q. And that is all.      A. That is all.

Mr. Nourse: If I said earlier that this only purported to cover January and February I am mistaken, because it goes down into May.

I now offer this in evidence.

Mr. Esterman: May I see it?

Mr. Nourse: You may.

Trial Examiner Schneider: As I understand it,

(Testimony of Myrtle M. Volz.)

Mrs. Volz, this is a corrected copy of Respondent's Exhibit 8, is that correct?

The Witness: Yes. [1269]

Q. (By Mr. Nourse): It is not only corrected, but it is an amplification.

A. Yes. I instructed the secretary of the office to go through all the files and make a copy of every application and authorization card that we have. There is also included in there the cards that are on exhibits. [1270]

Trial Examiner Schneider: Very well. Respondent's Exhibit 8 has not yet been introduced into evidence, according to my notes, so at this time it will be received, and Respondent's Exhibit 27 will also be received.

Mr. Esterman: That is satisfactory.

(Thereupon, the document referred to, heretofore marked for identification as Respondent's Exhibit 8, was received in evidence.)

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 27 and was received in evidence.) [1272]

(Testimony of Myrtle M. Volz.)

## RESPONDENT'S EXHIBIT No. 27

Showing Duplicates

## GILFILLAN APPLICATIONS

Application	Date	Authorization	Date
2-25-43	.....	2-	6-43
2-26-43	.....	1-	28-43
4-16-43	.....	1-	15-43
2-17-43	.....		
3-19-43	.....	3-	11-43
2-17-43	.....	2-	17-43
4-20-43	.....	3-	17-43
3-11-43	.....	2-	18-43
2-17-43	.....		
2-17-43	.....	2-	4-43
2-17-43	.....	2-	8-43
2-17-43	.....	2-	4-43
2-19-43	.....	2-	4-43
2-17-43	.....	2-	13-43
2-17-43	.....	2-	16-43
2-17-43	.....	2-	4-43
2-17-43	.....		
2-15-43	.....	2-	4-43
2-17-43	.....	2-	13-43
2-17-43	.....	2-	13-43
		<del>2-21-43</del>	
2-20-43	.....	2-	4-43
2-17-43	.....	2-	6-43
2-23-43	.....	2-	6-43
4-13-43	.....		
4-14-43	.....		
2-23-43	.....	2-	16-43
2-19-43	.....	2-	6-43
3-17-43	.....	3-	11-43
5- 1-43	.....		
2-26-43	.....		
2-18-43	.....	2-	4-43
2-18-43	.....	2-	2-43
2-28-43	.....	2-	4-43
2-18-43	.....	2-	4-43
2-19-43	.....	2-	19-43

(Testimony of Myrtle M. Volz.)

Gilfillan Applications—(Continued)

Application Date	Authorization Date
2-23-43 .....	2- 6-43
2-19-43 .....	2- 4-43
2-17-43 .....	2-10-43
2-17-43 .....	2- 4-43
2-26-43 .....	2- 7-43
2-26-43 .....	2-10-43
2-28-43 .....	2- 4-43
2-26-43 .....	2- 4-43
2-17-43 .....	2-13-43
2-17-43 .....	2- 4-43
3- 3-43 .....	
2-17-43 .....	2-13-43

GILFILLAN TRANSFERS

Alice Taylor .....	2/23/43
Donald Haag .....	2/17/43
Floyd H. Moore .....	2/ 8/43

GILFILLAN AUTHORIZATION CARDS  
NO APPLICATIONS

Date	Date	Date
2-12-43	2-15-43	1-18-43
2-19-43	2- 8-43	1-12-43
2- 9-43	2-19-43	1-13-43
1-16-43	1-13-43	2-21-43
2-18-43	3-24-43	2-10-43
2-13-43	2-11-43	2- 9-43
1-14-43	2-13-43	1-15-43
2-10-43	1-13-43	2- 8-43
2-12-43	2-14-43	2-15-43
1-12-43	2- 6-43	7-17-43
2- 7-43	2-12-43	2-12-43
2-10-43	2- 6-43	2- 9-43
2- 6-43	2- 5-43	2-12-43
1-12-43	2-13-43	2-20-43
2-17-43	1-26-43	2- 4-43
1-13-43	2-12-43	2-12-43

(Testimony of Myrtle M. Volz.)

## Gilfillan Authorization Cards—No Applications—(Cont'd)

Date	Date	Date
2-12-43	2- 4-43	2-17-43
2-21-43	2-10-43	2- 6-43
1-13-43	2-10-43	1-16-43
2-10-43	1-12-43	2- 6-43
1-13-43	2- 6-43	2- 4-43
2- 9-43	1-12-43	2-13-43
1-14-43	2-12-43	2- 4-43
2- 4-43	1-22-43	1-12-43
2-11-43	2-10-43	1-14-43
1-12-43	2-15-43	1- 4-43
2- 4-43	2-12-43	2-18-43
1-28-43	1-12-43	2-13-43
2- 5-43	2- 8-43	
2-12-43	2- 9-43	

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HARLEY BUCKNELL,

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. Nourse) Mr. Bucknell, did you ever have a list to get up for the War Man Power Board, or the War Production Board?

A. I never heard of any list of any kind nor was the subject of the War Man Power Board brought up.

Q. Answer my question, please. Did you ever have a list?           A. No.

Mr. Esterman: What is the War Man Power Board?

Mr. Nourse: I am just quoting to you his testimony. I don't know what it is. Do you?

(Testimony of Harley Bucknell.)

Trial Examiner Schneider: Will you indicate what it is?

Mr. Nourse: That is Page 202, the testimony of Mr. Hines.

Q. (By Mr. Nourse) Did you ever have any list that you used and asked any employee to sign?

A. Never any list of any sort or nature. I mean a list of no kind. [1280]

Q. Did you ever ask them to sign anything?

A. No, I did not.

Cross Examination

Q. (By Mr. Esterman) You remember testifying before that you took dues at the tool crib?

A. Oh, yes.

Q. You kept lists of people you collected from, didn't you? A. No, no promiscuous list.

Q. Just a minute. I want to be sure we are talking about the same thing. When I said list of people you collected from, did you know what I meant?

A. Well, they put me as a collector, but I was not. I only was a helper in that I only done a portion of the collecting.

Q. When a person came in and paid his or her dues—— A. Yes.

Q. ——didn't you usually sign for the 25 cents they gave you?

A. No, they had their card——

Q. (Interrupting) Didn't you? A. Yes.

Mr. Nourse: Wait a minute. He started to answer your question as to what he did then. I think



(Testimony of Harley Bucknell.)

the witness should be allowed to answer. [1281]

Trial Examiner Schneider: Had you finished your answer, Mr. Bucknell?

The Witness: No.

Trial Examiner Schneider: Go ahead.

The Witness: The dues, I just signed my name that I received the collection, and the date.

Q. (By Mr. Esterman) Signed where?

A. On the card.

Q. On the membership card? A. Yes.

Q. Now, who did you usually turn the dues in to? That is a bad sentence. Who did you usually give the dues money to?

A. When I first started to collect, if I remember, it was to Johnson. A very few times to Johnson, and the rest of the time to Red Lundberg.

Q. All right. And when you gave them the money, did you give them anything to indicate where you got the money from; that is, who paid you the dues?

A. Yes, we had a nice system. I just had a note paper, and when I turned over the money, they signed: Received so much money.

Q. All right. What did you have to indicate who paid you the dues? Suppose, for instance, that you had collected dues from ten people and you were turning it over to Johnson—I am trying to take a case of what must have happened at [1282] least once—and you wanted Johnson to know, of course, whose dues they were, didn't you?

A. They didn't ask me that, no.

(Testimony of Harley Bucknell.)

Q. But you wanted him to know, didn't you?

A. Yes.

Q. How did you give him that information—Did you tell him whose money it was?

A. No.

Q. How did you give him that information?

A. The main thing is I kept—the collections was made maybe over a period of three or four, several days, when I wouldn't see the parties until it just happened, you know.

Mr. Nourse: Mr. Bucknell, he asked you how you kept track of names of people who paid you dues. How did you keep track of it?

Mr. Esterman: That is right.

The Witness: I had no system of keeping track of it. I might add, for the reason——

Q. Just a minute, please. Look at Board's Exhibit 10. Do you remember testifying that except for the language on here, "Received 2-9-43 O. Lundberg" that the rest of this was in your handwriting; do you remember so testifying?

A. Well, if you will remind me what it was before, where this is any importance to that at all.

Q. Just a minute. [1283]

Mr. Nourse: Mr. Bucknell, is that in your handwriting?

The Witness: That's right, that is my handwriting. [1284]

Q. You did make up lists—now, wait until I finish asking the question—You did make up lists of E.M.A. members either for the purpose of show-

(Testimony of Harley Bucknell.)

ing that they had paid you dues or to remind you to collect from them, is that right?

A. To remind me to collect from them, yes.

Q. You did make such lists? A. Yes.

Q. And you made those out in the tool crib?

A. I don't know. I don't remember making up any lists. [1287]

Trial Examiner Schneider: I would like to state this: That in order to avoid any possible ambiguity in the record, the election which was held in May, 1937, which is referred to in the stipulation on Page 618, of the record, was arranged by the consent of all parties and was not an election directed after the formal hearing by the Board. The only purpose I make that for is——

Mr. Nourse: (Interrupting) Yes, but it was after a petition had been filed by the C.I.O.

Trial Examiner Schneider: Oh, yes, that appears in the stipulation.

Mr. Nourse: I didn't know how far you were modifying [1290] the stipulation.

Trial Examiner Schneider: I am not modifying the stipulation. [1291]

[Endorsed]: No. 10688. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Gilfillan Bros., Inc., Respondent. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed February 21, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



No. 10688

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

GILFILLAN BROS., INC., RESPONDENT

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

ALVIN J. ROCKWELL,  
*General Counsel,*  
MALCOLM F. HALLIDAY,  
*Associate General Counsel,*  
DAVID FINDLING,  
JAMES R. HEMINGWAY,  
*Attorneys,*  
*National Labor Relations Board.*

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FILED

SEP 21 1944

PAUL P. O'BRIEN,  
CLERK





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# In the United States Circuit Court of Appeals for the Ninth Circuit

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No. 10688

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

GILFILLAN BROS., INC., RESPONDENT

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

---

## JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board to enforce an order issued against respondent pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*). The jurisdiction of this Court is based upon Section 10 (c) of the Act. Respondent is a California corporation, having its principal place of business in Los Angeles, California, where it is engaged in the manufacture of war materials<sup>1</sup> and where the unfair labor practices occurred.

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<sup>1</sup> Respondent stipulated that it is engaged in interstate commerce within the meaning of the Act (R. 109-110), and no issue is raised as to jurisdiction.



## STATEMENT OF THE CASE

Following the usual proceedings under Section 10 of the Act, fully set forth in its decision (R. 84-87), the Board on November 13, 1943, issued its findings of fact, conclusions of law, and order (R. 87-89; 53 N. L. R. B. 574). The Board found that under all the circumstances disclosed by the record, and particularly in view of the financial assistance which respondent gave a labor organization of its employees, styled the E. M. A. or the Association,<sup>2</sup> in view of the activity of supervisory employees, called leadmen or foremen, in behalf of that organization, and in light of the circumstances surrounding respondent's entry into a contract with the organization on about May 5, 1943, the Association is company-dominated and supported, in violation of Section 8 (2) and (1) of the Act (R. 85). It ordered respondent to cease and desist from its unfair labor practices; to cease giving effect to the contract in question, or any modification, extension, or renewal; to withdraw recognition from and disestablish the Association as the bargaining representative of the employees; and to post appropriate notices of compliance with the order.<sup>3</sup>

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<sup>2</sup> The full name of the organization is the Employees Mutual Association. The Association intervened in the proceedings before the Board and participated by counsel (R. 17, 108).

<sup>3</sup> The Board also found (R. 86-87), contrary to respondent's contention, that the proviso to the Board's appropriation for the fiscal year ending June 30, 1944, did not preclude it from proceeding with the case. That proviso prohibited the Board from using any of the funds appropriated to it for that fiscal year, in connection with complaint cases where an agreement between management and labor had been "in existence for three months or longer without complaint being filed" (see Appendix "B," p. 28,

## SUMMARY OF ARGUMENT

I. The Board's findings of facts are supported by substantial evidence. These facts show that respondent assisted and supported the Association by, *inter alia*, financial and other aid which it gave that organization from time to time, the participation of supervisory employees, called leadmen or foremen, in its affairs, and their activities on its behalf. Respondent also entered into a contract with the organization in May 1943 although it knew that the International Association of Machinists, hereinafter called the I. A. M., claimed to be the majority choice, and although the Association did not present adequate proof that it represented the majority. Upon these facts, there was rational basis for the Board's conclusion that respondent dominated, interfered with, and contributed support to the Association, in violation of Section 8 (2) and (1) of the Act.

II. The Board's order is valid and proper. It is in the conventional and approved form upon the findings made.

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*infra*.) Since this limitation upon the Board's spending power expired on June 30, 1944, respondent cannot, of course, possibly rely upon it now, as precluding the Board from using its current funds in connection with the case. The proviso to the Board's appropriation for the current fiscal year clearly has no application to the case at bar for it specifically excludes company unions, formed in violation of Section 8 (2) of the Act, from its operation (see Appendix "C," p. 29, *infra*). In any event, the propriety of the Board's expenditure of its appropriation is a matter between the Board, Congress, and the Comptroller General, with which this Court will not concern itself in this proceeding. *N. L. R. B. v. Thompson Products, Inc.*, 141 F. (2d) 794 (C. C. A. 9); *N. L. R. B. v. Cowell Portland Cement Co.* (without opinion), decided September 9, 1943 (C. C. A. 9).

## ARGUMENT

## POINT I

**The Board's findings of fact are supported by substantial evidence. Upon these facts there is rational basis for the Board's conclusionary finding that respondent has engaged in unfair labor practices within the meaning of Section 8 (2) and (1) of the act**

A. The facts as found by the Board and shown by the evidence

*1. Formation of the Association and events from 1937 to 1941*

The Association was formed early in 1937, at about the same time that a C. I. O. union<sup>4</sup> was attempting to organize respondent's employees (R. 170, 186, 189). On two occasions during this period several employees called upon respondent's personnel manager, Semple, for aid in starting the organization. On the first occasion, a group of employees consisting of Miller, Axe, and perhaps another, asked Semple for "advice as to how to form a union" (R. 174). Semple referred them to the public library and advised them to consult Roberts' Rules of Order (R. 174). Later, a group composed of Miller, Axe, and perhaps two or three others consulted Semple as to securing a place to hold a general meeting, and explained to him that they had no funds (R. 175-177). Semple thereupon made arrangements for them to use respondent's premises to hold the meeting, after he had received "assurance" that attendance would be confined to those interested in

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<sup>4</sup> United Electrical, Radio, and Machine Workers of America, Local 1421 (R. 342).

the Association (R. 176).<sup>5</sup> Semple could not explain to the Board why he desired these assurances (R. 176),<sup>6</sup> and in view of the concurrent C. I. O. activities at the plant it is a fair inference that the assurances were obtained to prevent the attendance of "outsiders" on behalf of that organization.

Within a short time after formation of the Association, respondent aided it further with financial donations, consisting of the proceeds of various vending machines which were maintained in the plant. It previously had been respondent's practice to donate the proceeds of these machines to a children's charity (R. 182), but upon the Association's asking Semple at this time "why they [the Association] should not get the proceeds," these sums were thereafter turned over to that organization (R. 182-183, 188).<sup>7</sup> That the arrangement was a direct financial contribution by respondent to maintenance of the Association is

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<sup>5</sup> Semple testified that the "arrangements" which he made consisted of "seeing that the space upstairs was cleared and [of] getting assurances from those boys that they would properly protect the meeting and allow nobody else up there," except members of the Association (R. 176).

<sup>6</sup> Semple testified, "Now, I don't know whether I can say why I did it now, or not." The record as printed (R. 176) omits the word "why" from Semple's testimony, but reference to the original certified transcript of testimony (Tr. 156, lines 24-25) shows that Semple testified as quoted above.

<sup>7</sup> Semple could not recall exactly when the arrangement transferring the gift from the children's charity to the Association was made (R. 183). He testified that "after the E. M. A. was formed, and because it seemed to me they were constantly short of funds, they came to me and asked me why they shouldn't get the proceeds, as it would materially help their funds" (R. 182).



emphasized by the fact that respondent apparently made good the resulting loss to the charitable organization by sending that organization substitute cash gifts (R. 183), and by the further fact that respondent continued to receive the proceeds of the machines from the owners and to deposit the money in its own account until the collections reached a substantial sum. Respondent would then send its own check for the proceeds to the Association (R. 183-184, 262-265, 589). This arrangement continued at least to the time of the hearing before the Board (R. 264, 589), and provided the Association with a substantial proportion of its financial resources.<sup>8</sup>

In the summer of 1938 respondent contributed between \$100 and \$200 to the Association for a picnic for the employees, their families, and friends, and helped the project further by inducing merchants to donate prizes (R. 180-181, 184-185). The Association wished to duplicate a picnic given the previous summer by respondent (R. 178-181). However, as Personnel Manager Semple testified (R. 181), "Their treasury was not strong enough for that, and they were very much disturbed that the standard of the picnic should drop below the previous year." Accordingly, Semple discussed the matter with respondent's president, Gilfillan, told him that "I thought it was a good thing to back these fellows," and secured

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<sup>8</sup> During the period from July 1941 through March 1943, the Association's income from dues was \$532.46 and its income from the receipts of candy and soft drink vending machines, turned over to it by respondent, was at least \$333.10 (R. 262-264; 272-273). (The figure \$432.46 at R. 273 obviously is incorrect, and should be \$532.46.)

Gilfillan's consent to meeting whatever deficit the picnic incurred (*ibid.*).

On May 1, 1937, the C. I. O. union (note 4, p. 4, *supra.*) filed with the Board's appropriate regional office a petition for certification as the exclusive representative of respondent's employees (R. 342). On May 19, 1937, the regional office conducted a consent election among the employees, which the Association won (*ibid.*).<sup>9</sup> In about August 1937, respondent entered into a collective bargaining contract with it (R. 14). Thereafter, until 1941, the Association, while not entirely dormant, was comparatively inactive except for renewal contracts which were negotiated from time to time (R. 275, 371). Like its formation, its active revival coincided with activity at the plant by an "outside" union, presumably the I. A. M. (R. 371).

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<sup>9</sup> This circumstance, of course, does not immunize respondent from the charge that the Association has been dominated and assisted, so as to render it incapable of acting as the genuine arms-length collective bargaining representative of the employees, contemplated by the Act. That question was not involved in the representation proceeding. *American Federation of Labor v. N. L. R. B.*, 308 U. S. 401, 405, 409; *Warehousemen's Union v. N. L. R. B.*, 121 F. (2d) 84, 93-94 (App. D. C.), cert. denied 314 U. S. 674; *Magnolia Petroleum Co. v. N. L. R. B.*, 115 F. (2d) 1007, 1012 (C. C. A. 10). See also cases cited below in this note. Moreover, "It is the duty of the Board to prevent unfair labor practices; and the fact that it may have certified a union as a bargaining representative does not limit its power later to declare such union to be company dominated and order its disestablishment, if such course is seen to be proper in the light of subsequent developments." *Wallace Corp. v. N. L. R. B.*, 141 F. (2d) 87, 91 (C. C. A. 4), certiorari granted 64 S. Ct. 1262. See also *Utah Copper Co. v. N. L. R. B.*, 139 F. (2d) 788, 791 (C. C. A. 10), cert. denied 64 S. Ct. 946; *N. L. R. B. v. Sun Shipbuilding & Drydock Co.*, 135 F. (2d) 15, 18, 23 (C. C. A. 3).



## 2. Events of 1941 to 1943

In May 1941 the I. A. M. filed a charge with the Board's regional office alleging that respondent had "encouraged and otherwise interfered with the formation" of the Association, had discharged an employee because of union activity on behalf of the I. A. M., and had thereby, as well as by other conduct, interfered with, restrained, and coerced its employees (R. 339). On the recommendation of a field examiner of the Board and with the approval of the regional director, respondent thereafter posted in its plant a copy of a letter to the examiner stating, *inter alia*, that respondent would (R. 339-341)—

instruct its foremen and leadmen not to accept places on committees of labor organizations having members in the employ of Gilfillan Bros., Inc., and not to influence the employees with respect to union affiliations in any manner; [and] that the Company agrees that it will not in any manner dominate or interfere with the administration of the \* \* \* Association or any other labor organization having members among its employees.

The I. A. M. withdrew its charge (R. 339).

Despite the notice, leadmen or foremen<sup>10</sup> continued to be active members of the Association, to take a lead-

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<sup>10</sup> There is conflict in the evidence as to the correct appellation of the employees in question. Some witnesses referred to them in their testimony as foremen (R. 134, 161, 191, 194-195, 200, 210-211, 234, 252) and others referred to them as leadmen (R. 114-115, 312, 344, 353-354, 360-361, 539, 596, 602). That they were commonly referred to as foremen prior to the Board hearing is evident from the use of that designation to describe them in the Association's

ing part in its affairs, and "to influence the employees with respect to union affiliations." The president of the organization, Johnson, who was elected to that office in June 1942 (R. 395), occupied the position of leadman from July 1942 to February 1943 but nevertheless continued as president during that period (R. 192-193, 393, 395, 531-532).<sup>11</sup> Leadman Clark accepted a nomination and was elected to the Association's grievance committee in January 1943 (R. 141, 195-196, 395). Leadman Scheid served as a committee of one to arrange on behalf of the Association for the installation of new vending machines in the plant, which were used, as has been noted, to augment the funds of the organization (R. 602-605). Inspection department supervisor, Schwertfeger, acted as a dues collector for the Association in 1942 and 1943 (R. 267, 479, 480-481), and Leadman Bleuel (R. 113) served on the committee which negotiated and signed the Association's 1943 contract with respondent (R. 440). Leadlady Goebel also collected dues on behalf

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1943 contract (R. 442). We discuss *infra* pp. 20-23, the Board's finding that the employees in question, whether styled foremen or leadmen, occupied positions which justified the general body of employees in inferring, as they in fact did, that they represented and spoke for management, and that respondent was therefore answerable under the Act for their activities (R. 31-38, 85).

<sup>11</sup> Johnson also collected dues for the Association during this period (R. 234-235, 238-239, 266-267). The Association's treasurer, Pfleger, had been in respondent's employ since 1920 and had been a foreman during most of the first 20 years of his employment (R. 276). At the time of his election to the office of treasurer, his classification was that of toolmaker (R. 277). At the time of the hearing he was engaged in work of a military, secret nature (R. 277).

of the Association and, in addition, was active in soliciting memberships for the organization and in suggesting and persuading the employees to attend its meetings (R. 143-144, 223-224, 228-230, 234, 237, 259, 292, 301, 453-455, 457-458). Other leadmen or foremen likewise encouraged attendance at meetings and even took the initiative in getting employees to attend (R. 146, 210-212, 252). On one occasion Leadman Nelson asked Superintendent Cramer (R. 144-145, 590) whether it was necessary for the employees to attend a meeting. Cramer replied, according to Nelson, that "as an official of the Company," he could not say anything, but that the employees should "get over there in a body and they may get a raise out of it and keep some other union from coming in on them" (R. 145).<sup>12</sup>

Respondent permitted the Association free rein to carry on its activities on company time and property. Dues were frequently collected in the plant during working hours (R. 198, 203-204, 480-481). Bucknell, who was employed as tool crib attendant and who was apparently one of the chief dues collectors for the Association, regularly and openly collected dues not only while on duty at the crib (R. 228, 234, 259, 381-383) but also at the machines in other portions of

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<sup>12</sup> Cramer testified that when notices of Association meetings were posted in the plant he would be "flooded" with questions, such as "Do we have to go?", "Should we go?", and "Are you going to shut down the plant and make us go?" (R. 597). He testified that he told the employees at such times that they did not have to attend (R. 597), but at another point in his testimony (R. 590) he corroborated in part Nelson's testimony, reviewed in the text, and which the Board credited (R. 29-30, 85).

the plant during working time (R. 198, 204). Bucknell first undertook his dues-collection duties at the request of Leadman Lundberg, who had a short time before been president of the Association, having resigned from the office in March 1942 because he was promoted to "foreman" (R. 382-383, 371-372).<sup>13</sup>

Solicitation of members for the Association during working hours was also a common practice in the plant (R. 223-224, 227, 234, 315, 323-324, 325). These activities, too, were carried on with no attempt at concealment and without reprimand from respondent's supervisors (R. 315, 325). While there was some sporadic solicitation in the plant on behalf of the I. A. M., this activity apparently took place during rest periods<sup>14</sup> and was limited and casual (R. 123, 154, 225). Moreover, except for one incident, it does not appear that it came to the attention of the super-

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<sup>13</sup> The characterization is that used by Lundberg in referring to his promotion to leadman (R. 372). Following his resignation from the presidency, Lundberg continued to be a member of the Association and to attend meetings, and acted as an intermediary in passing collected dues from various dues collectors to the Association's treasurer (R. 267, 389). Bucknell's testimony as to the reason for his collecting dues is especially revealing of the relations in the eyes of the employees between the Association and respondent. Bucknell testified on direct examination by Board's counsel (R. 382):

"Q. Did anyone ask you to collect dues or was it your own idea \* \* \* ?

"A. I always tried to help out anyone.

"Q. Did someone ask you to help them out ?

"A. If it helps the company, I certainly helped them."

<sup>14</sup> Rest periods apparently were also time paid for by respondent (R. 123).

visors. On the one occasion when a supervisor (General Foreman Walters) did observe an employee soliciting for the I. A. M. in the washroom, he admonished the employee, stating that "that was one A. F. of L. rule—that they were specifically told not to . . . [violate]" (R. 123). On the occasions of the Association's regular monthly meetings, respondent closed the plant's day shift one-half hour early, and began its night shift late, thus excusing the employees from work on both shifts while they attended the meetings (R. 144–145, 229–230, 237, 253). Notices announcing these meetings were posted in the plant (R. 229, 252).

*3. Circumstances surrounding the execution of the 1943 contract between the Association and respondent*

About January 10, 1943, the I. A. M. began a further organizational campaign at respondent's plant; handbills and authorization cards were distributed, two open meetings were held at a hall near the plant, and by late February, a substantial number of employees had signed authorization cards (R. 196, 307). Almost concurrently with the commencement of the campaign, respondent granted a general wage increase to its female employees, thereby bringing its wage scale up to that prevailing in other plants in the vicinity, and adjusting a differential between male and female employees' rates (R. 409–410, 554–555). Respondent knew from a conversation with Association President, Johnson, had a short time before, that one of the employees' grievances was the fact that respondent's wages were lower than those prevailing



in other plants, "especially for starting wage for women" (R. 409-410, 556-557).<sup>15</sup>

On about February 27, 1943, the I. A. M. filed with the Board's regional office a petition alleging that it represented the majority of respondent's employees, and requesting certification (R. 216-217, 617). Notice of the filing of the petition was given respondent and the Association in writing (R. 617). On about March 6 (R. 581), officers of the Association met with President Gilfillan to discuss renewal of the 1942 contract between respondent and the Association, which was to expire on April 30 (R. 316-319, 565-567, 582). Gilfillan asked the officers of the Association how the organization was functioning and if it was in "good order"; stated that if it were not and "if we wanted to get in competition with the A. F. of L.," the officers had better get on their toes and "keep the thing functioning" (R. 319); and urged them "to get on their toes and combat this election, that they [the I. A. M.] were going to try to demand \* \* \*" (R. 322). During the conversation Gilfillan also stated in substance that he would not enter into any contracts "un-

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<sup>15</sup> The timely grant of wage adjustments is a familiar device to forestall or interfere with union organization. E. g., *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 460; *N. L. R. B. v. American Potash & Chemical Corp.*, 98 F. (2d) 488, 494 (C. C. A. 9), cert. denied, 306 U. S. 643; *N. L. R. B. v. Christian Board of Publication*, 113 F. (2d) 678, 683 (C. C. A. 8); *N. L. R. B. v. Crown Can Co.*, 138 F. (2d) 263, 266, 267 (C. C. A. 8), cert. denied, 64 S. Ct. 527; *N. L. R. B. v. W. A. Jones Foundry & Machine Co.*, 123 F. (2d) 552, 553-554 (C. C. A. 7); *Southern Colorado Power Co. v. N. L. R. B.*, 111 F. (2d) 539, 543-544 (C. C. A. 10), enf'g 13 N. L. R. B. 699, 710-711.



less he was positive he was dealing with the right party" (R. 567), and President Johnson, of the Association, replied that he would advise Gilfillan in a few days how many members the organization had (R. 567).<sup>16</sup>

A few days later (R. 581-582), as Gilfillan was making his rounds through the machine shop, Johnson apprised him of the sum which the Association had collected in dues for the month of March and of the number of employees who had paid (R. 573-574). Neither Johnson nor Gilfillan, in their testimony, stated what figures the former supplied.<sup>17</sup> Whatever the figures, Gilfillan did not inquire into their accuracy, did not ask how they had been computed, and did not ask to see the dues or membership lists (R. 574). The record shows that in fact \$53.25 was collected in dues for March (R. 270-271, 273). Since dues were 25 cents per month (R. 148, 228, 324), it is clear that at most 213 employees had paid.<sup>18</sup> Respondent employed at about this time more than 450 employees (R. 167).

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<sup>16</sup> In view of this conversation and the fact that approximately 6 years had passed since the 1937 consent election, it is clear that respondent did not regard it as establishing the Association's continuing representative status at this time.

<sup>17</sup> Johnson testified (R. 574):

"I told him that we had the March dues and that we had collected so many dues from so many different people, and I told him the amount that we had collected. The amount of people that had paid dues to the E. M. A."

<sup>18</sup> Johnson had testified previously that 294 employees paid dues that month (R. 400-401), but this testimony is inconsistent with data furnished by the Association's treasurer, which conclusively establish the facts to be as stated in the text.

On March 8, the I. A. M. filed with the Board the unfair labor practice charge which initiated the instant case (R. 1-2). On April 12, the I. A. M. sent respondent a letter notifying it that because of the filing of the charge it had "temporarily and without prejudice" withdrawn its petition for certification, but stating in substance that it was the true representative of respondent's employees, and that any dealings between respondent and the Association as the purported representative would be "without legal force and effect," and would be "protested" by the I. A. M. (R. 216-217).

Nevertheless, respondent negotiated with the Association for renewal of the 1942 contract (R. 412-413), without seeking any proof of the Association's majority status other than Johnson's unsupported and apparently casual statement to Gilfillan as to dues collections (see *supra*, p. 14).<sup>19</sup> On April 29, 1943, respondent entered into an agreement with the Association extending the expiring 1942 contract for 30 days, until the pending negotiations might be completed (R. 443-444). On about May 5, 1943 (R. 413), a new contract for one year from May 1, 1943, and containing an automatic renewal clause, was signed (R. 433 [Art. III]). This contract substantially revamped respondent's wage structure, and provided for wage increases (R. 434, 441-445).

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<sup>19</sup> As has been noted (note 16, p. 14, *supra*), it is clear that neither respondent nor the Association was relying upon the election of 1937.

**B. The propriety upon these facts of the Board's conclusionary finding that respondent dominated and supported the Association, in violation of Section 8 (2) and (1) of the Act**

***1. The foregoing facts afford rational basis for the Board's conclusionary finding***

We submit that, upon the foregoing facts, the Board's conclusionary finding (R. 85) that "under all the circumstances taken together, \* \* \* we are convinced \* \* \* that the respondent dominated and interfered with the formation and administration of the Association and contributed support to it" is supported by substantial evidence.

The instant case discloses many familiar indicia of employer domination and support. The notion to form the Association was conceived apparently at a time when a nationally affiliated union was commencing an organizational drive among respondent's employees.<sup>20</sup> The aid of respondent's personnel director was sought for the venture, and the director assisted by providing a place in the plant where a

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<sup>20</sup> For cases in which the timing factor was regarded as significant see e. g., *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, 336; *N. L. R. B. v. Brown Paper Mill Co.*, 108 F. (2d) 867, 870 (C. C. A. 5), cert. denied, 310 U. S. 651; *International Association of Machinists v. N. L. R. B.*, 110 F. (2d) 29, 37 (App. D. C.), aff'd, 311 U. S. 72; *N. L. R. B. v. Norfolk Shipbuilding & Dry Dock Co.*, 109 F. (2d) 128, 129 (C. C. A. 4); *Subin v. N. L. R. B.*, 112 F. (2d) 326, 329 (C. C. A. 3), cert. denied, 311 U. S. 673; *N. L. R. B. v. Burry Biscuit Corp.*, 123 F. (2d) 540, 542 (C. C. A. 7); cf. *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626, 629 (C. C. A. 9), cert. denied, 311 U. S. 668. This circumstance suggests that the initiators of the organization are not interested so much in forming a union for collective bargaining as to forestall the outside union.

general meeting of the employees to further the organization was held.<sup>21</sup> At the same time, care was taken to see to it that no "outside" influence intruded upon the meeting.

Typical of company-dominated and supported organizations, the Association's dues were a meager sum,<sup>22</sup> and the organization found it necessary to lean upon respondent for support in financing its administration. Respondent readily complied with the organization's request for a gift of the vending machine proceeds, which respondent had previously contributed to charity.<sup>23</sup> Respondent also supported the Association by underwriting its picnic to the extent of from \$100 to \$200, and soliciting merchants for donations of prizes.<sup>24</sup>

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<sup>21</sup> See *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 593 (C. C. A. 9); *N. L. R. B. v. Ed. Friedrich, Inc.*, 116 F. (2d) 888, 890 (C. C. A. 5); *N. L. R. B. v. Moore-Lowry Flour Mills*, 122 F. (2d) 419, 422 (C. C. A. 10).

<sup>22</sup> See, *inter alia*, *N. L. R. B. v. Baldwin Locomotive Works*, 128 F. (2d) 39, 49 (C. C. A. 3); *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254, 259 (C. C. A. 3), cert. denied, 308 U. S. 615; *N. L. R. B. v. Viking Pump Co.*, 113 F. (2d) 759, 760 (C. C. A. 8), cert. denied, 312 U. S. 680.

<sup>23</sup> Similar concessions were found to be a form of financial support in *E. G. Budd Mfg. Co. v. N. L. R. B.*, 138 F. (2d) 86, 89-90 (C. C. A. 3), cert. denied 321 U. S. 778; *N. L. R. B. v. Metal Mouldings Corp.*, enforcing on April 6, 1943, without opinion, 39 N. L. R. B. 107, 118 (C. C. A. 6).

<sup>24</sup> Similar forms of support were found in, *inter alia*, *Wilson & Co. v. N. L. R. B.*, 103 F. (2d) 243, 251 (C. C. A. 8); *N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 669-670 (C. C. A. 8); cf., *N. L. R. B. v. Wm. Tchel Bottling Co.*, 129 F. (2d) 250, 252 (C. C. A. 8); *N. L. R. B. v. Rock Hill Printing and Finishing Co.*, 131 F. (2d) 171 (C. C. A. 4), enf'g 29 N. L. R. B.; *West Virginia Glass Specialty Co. v. N. L. R. B.*, 134 F. (2d) 551, 552 (C. C. A. 4), cert. denied, 64 S. Ct. 38.



Soon after its establishment as the "representative" of the employees, the Association lapsed into comparative inactivity until 1941, when an "outside" union again became active among respondent's employees.<sup>25</sup> Such inactivity is scarcely conceivable on the part of a truly independent labor organization whose purpose is to represent the employees for the betterment of their wages and working conditions.<sup>26</sup> Supervisory employees took an active part in its affairs, served as officers and committeemen, and openly sought to influence the employees to attend meetings of the organization and to adhere to it. The Association's representatives were freely permitted to solicit members and collect dues in the plant during working hours, and working hours on the shifts were shortened for the convenience of the Association so that the organization held its regular meetings during hours which were normally working time. Such activities by supervisors and free use of company time, property, and facilities for dues collection, solicitation, and meetings, are, of course, familiar forms of employer interference and support.<sup>27</sup>

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<sup>25</sup> See the *Tovrea Packing* case and other cases cited in note 20, p. 16, *supra*.

<sup>26</sup> Cf., *N. L. R. B. v. Cities Service Co.*, 129 F. (2d) 933, 935 (C. C. A. 2); *N. L. R. B. v. Aluminum Products Co.*, 120 F. (2d) 567, 571 (C. C. A. 7); *Continental Box Co. v. N. L. R. B.*, 113 F. (2d) 93, 96 (C. C. A. 5).

<sup>27</sup> E. g., *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 590, 591-592; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518-519; *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 593, 594 (C. C. A. 9); *N. L. R. B. v. Germain Seed & Plant Co.*, 134 F. (2d) 94, 96-99 (C. C. A. 9); *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254, 258 (C. C. A. 3), cert. denied 308 U. S. 615.

Finally, the circumstances surrounding the execution of the May 1943 contract are particularly illuminating, as the Board found (R. 85). Despite the fact that the I. A. M. had filed a petition for certification with the Board and was claiming to be the majority representative, respondent entered into a new contract with the Association. Cf., *Elastic Stop Nut Corp. v. N. L. R. B.*, 142 F. (2d) 371, 379-380 (C. C. A. 8), employer's petition for certiorari filed July 3, 1944. Moreover, respondent did so without any substantial proof or investigation as to the Association's status, which, as the record shows, was in fact that of a minority organization. Such conduct constituted assistance and support of the Association of the most potent kind.<sup>28</sup>

In sum, the record here shows repeated support of the Association by respondent at various times, including times when such support seemed necessary to maintenance of the organization among the employees. It also shows evidence of direct financial aid on occasion, and interference by respondent, through its supervisory employees, in the Association's administration. It further shows activity by respondent, through such supervisory employees, in influencing the employees to support it by attending meetings and paying dues. As was said by the Senate Committee on Education

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<sup>28</sup> Cf., *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267; *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 461; *N. L. R. B. v. Quality Art Novelty Co.*, 127 F. (2d) 903, 905 (C. C. A. 2); *N. L. R. B. v. Rock Hill Printing and Finishing Co.*, 131 F. (2d) 171, 173 (C. C. A. 4); *N. L. R. B. v. Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 252 (C. C. A. 8).



and Labor in reporting the bill which later became the Act:

\* \* \* It is impossible to catalog all the practices that might constitute interference, which may rest upon subtle but conscious economic pressure exerted by virtue of the employment relationship. The question is one of fact in each case. And where several of these interferences exist in combination, the employer may be said to dominate the labor organization by overriding the will of employees.<sup>29</sup>

*2. Respondent's responsibility under the Act for the activities of its leadmen or foremen*

Respondent claimed before the Board that it is not answerable under the Act for the activities of the leadmen (also known in the record as foremen) in behalf of the Association. The Board found (R. 38, 85), however, that leadmen were supervisory employees, and that, even if they were not, their powers and duties in the plant were such that the general body of employees were justified in inferring, as they in fact did, that the leadmen spoke for and represented the management. The Board concluded, therefore, that respondent is accountable under the Act for their activities (R. 38, 85). The record amply supports these findings.

The record shows that the leadmen, of whom there are 8 to 10, worked directly under 2 general foremen who were in charge, respectively, of respondent's day and night shift (R. 112-114, 134-136, 359, 360,

<sup>29</sup> Senate Report No. 573, p. 10, Report of the Senate Committee on Education and Labor on S. 1958 (74th Congress, 1st Session).

506-507).<sup>30</sup> Their duties consisted of distributing the work to their subordinates, who included from 7 to 20 employees each (R. 162-164, 312-313, 361, 476-478), and giving them directions as to the time, place, and manner of performance of their duties (R. 115, 117, 163-164, 227, 378, 469-472, 476-477). They did practically no regular production work themselves, except when demonstrating the work to inexperienced men, setting up machines for them, or testing the machines before turning them over to regular operators (R. 129-130, 237-238, 250-251, 296, 364). At regular intervals they checked the quality of the work being turned out at the machines, checked blue print tolerances, and generally oversaw operations (R. 503-504, 592-593). Employees were required to obey orders from leadmen (R. 127-128, 304, 377-378).

Leadmen could not themselves hire or discharge employees, but they had power to recommend the discharge of employees working under them, they were consulted as to discharges, and their recommendations were given serious weight and frequently, if not always, followed (R. 127-128, 131-132, 157-158, 164, 294-295). They also recommended and were consulted as to pay increases for their subordinates (R. 376-377). The employees, generally, regarded the leadmen as their bosses (R. 207, 223, 227, 471-472). That respondent also regarded them as supervisors seems evident from the fact that at the time of the 1941 charges against respondent (*supra*, p. 8), the

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<sup>30</sup> Respondent also had a general foreman in charge of the swing shift but there were no leadmen on this shift (R. 348, 363-364).

latter agreed to instruct its “*foremen and leadmen* not to accept places on committees of labor organizations \* \* \* and not to influence the employees with respect to union affiliations in any manner.” [Italics supplied.] Moreover, respondent’s 1942 contract with the Association provided that leadmen in the machine shop were to receive at least 15 cents per hour more than the top men employed “under their supervision” (R. 584).

In view of the foregoing, it is clear that the leadmen represented the management to the general body of employees, and that they enjoyed a status sufficient under the controlling decisions to establish employer liability for their acts. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 79–80; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 599; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 520–521; *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787 (C. C. A. 9).

The fact that the leadmen were eligible to join the Association does not absolve respondent from liability for the improper influence of their activities upon the freedom of the general body of employees. The supervisors in the *Machinists* case, *supra*, were also members of the favored union, but the Supreme Court nevertheless enforced the Board’s order against the employer, based in part upon their activities on behalf of the organization they preferred (311 U. S. 72, 80, 81). See also the *Pacific Gas & Electric* case, *supra*, 118 F. (2d) at 788; *N. L. R. B. v. Aintree Corp.*, 132 F. (2d) 469 (C. C. A. 7), cert. denied 318 U. S. 774;

*N. L. R. B. v. Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 671 (C. C. A. 8); *N. L. R. B. v. Christian Board of Publication*, 113 F. (2d) 678, 682 (C. C. A. 8).

## POINT II

### The Board's order is valid and proper

The Board's order (R. 87-89) requires respondent to cease and desist from its unfair labor practices; to cease giving effect to the 1943 contract with the Association; to withdraw recognition from, and disestablish, the Association as collective bargaining representative; and to post appropriate notices. These are the conventional and judicially approved provisions upon the findings made. *N. L. R. B. v. Falk Corp.*, 308 U. S. 453; *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

The requirement (R. 87) that respondent cease and desist from dominating, interfering with, or supporting, the formation or administration of "any other" labor organization of its employees is warranted. Such a requirement is uniformly included in all Board orders based upon findings of domination and support of a labor organization, and has been approved by the courts in numerous cases, so commonplace as not to warrant citation. Clearly, it is not unreasonable to require an employer that has dominated and interfered with one labor organization of his employees, not to do so with respect to the particular, *or any other*, organization. Otherwise, an employer so minded could continue to commit essentially the same

unfair labor practice without ever being under the sanction of a judicial decree, and enforcement of the Act would be reduced merely to a series of futile Board orders which the employer could meet by diverting his domination and support to successive new organizations. "In consideration of the evident fact that the methods by which a given unfair labor practice may be committed are so varied and numerous," omission of the phrase challenged by respondent would render the "protection granted to employees by the Act \* \* \* largely ineffectual" since it would require a "specific prohibitory order" by the Board each time the employer's ingenuity suggested another "variation on the same theme." *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 661 (C. C. A. 9).

The requirement (R. 88) that respondent cease and desist from "in any other manner" interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in the Act, is also proper upon the facts of the case at bar. The test of the validity of such a provision, laid down by the Supreme Court in *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, is whether the record shows a course of conduct which contains the threat that the employer, unless restrained, will engage in "continuing and varying efforts" to defeat the right of his employees to self-organization for collective bargaining (312 U. S. 426, at pp. 435, 436-437, 438). This test is fully met here, in view particularly of respondent's support of, and interference with, the Association over a period of many years; the critical timing of this support with organizational activities on behalf of legitimate un-



ions; respondent's continued interference after the settlement of 1941; and respondent's conduct in disregarding the pending unfair labor practice charges and rival claim of the I. A. M. to majority representation, and in entering into a new contract with the Association in May 1943. These circumstances suggest that respondent is strongly opposed to legitimate unionization of its employees for genuine collective bargaining, and threaten "continuing and varying efforts" to defeat such unionization in the future. See *N. L. R. B. v. Standard Oil Co.*, 138 F. (2d) 885 (C. C. A. 2); *N. L. R. B. v. Stehli & Co.*, 125 F. (2d) 705 (C. C. A. 3), enf'g 35 N. L. R. B. 44, 61; *Roebbling Employees Ass'n v. N. L. R. B.*, 120 F. (2d) 289 (C. C. A. 3), enf'g 17 N. L. R. B. 482, 503; *N. L. R. B. v. Precision Castings Co.*, 130 F. (2d) 639 (C. C. A. 6) enf'g in this regard 30 N. L. R. B. 212, 230-231.

#### CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree of enforcement should issue.

ALVIN J. ROCKWELL,  
*General Counsel,*

MALCOLM F. HALLIDAY,  
*Associate General Counsel,*

DAVID FINDLING,  
JAMES R. HEMINGWAY,  
*Attorneys,*

*National Labor Relations Board.*

SEPTEMBER 1944.



## APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

\* \* \* \* \*

SEC. 10. \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States \* \* \* within any circuit \* \* \* wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in

the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. \* \* \* The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

## APPENDIX B

The pertinent provisions of the Labor-Federal Security Appropriation Act, 1944 (Act of July 12, 1943, Public Law 135, 78th Congress, 1st Session; Title IV, National Labor Relations Board Appropriation Act, 1944) are as follows:

\* \* \* No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed: *Provided*, That, hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person.

## APPENDIX C

The pertinent provisions of the Labor-Federal Security Appropriation Act, 1945 (Act of June 28, 1944, Public Law 373, 78th Congress) are as follows:

\* \* \* No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant: *Provided*, That, hereafter, notice of such agreement or a renewal thereof shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person: *Provided further*, That these limitations shall not apply to agreements with labor organizations formed in violation of section 158, paragraph 2, title 29, United States Code.

(29)



No. 10688.

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

---

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

*vs.*

GILFILLAN BROS., INC.,

*Respondent.*

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD.

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BRIEF OF RESPONDENT, GILFILLAN BROS.,  
INC.

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PAUL NOURSE,  
1017 Rowan Building, Los Angeles 13,  
*Attorney for Respondent.*

**FILED**

NOV 11 1944









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No. 10688.

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

*vs.*

GILFILLAN BROS., INC.,

*Respondent.*

---

## BRIEF OF RESPONDENT, GILFILLAN BROS., INC.

---

### Statement of the Case.

Petitioner's statement of the case is correct as far as it goes. It fails, however, to set forth certain matters which we deem pertinent.

The complaint filed by petitioner made four charges against the respondent:

First, that respondent sponsored, promoted, encouraged, assisted and interfered with the formation of the Association,<sup>1</sup> in violation of Section 8(2) of the Act.<sup>2</sup>

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<sup>1</sup>Throughout this brief the Employees Mutual Association will be referred to as the "Association"; the International Association of Machinists as the "I.A.M." or the "Union"; and respondent as "Gilfillan" or the "Company."

<sup>2</sup>Throughout this brief the National Labor Relations Act (Act of July 5, 1935, c. 372, 29 U. S. C.) will be referred to as the "Act." The pertinent sections of the Act are set forth in Appendix A.

Second, that respondent interfered with the administration of the Association and contributed support thereto, in violation of Section 8(2) of the Act.

Third, that respondent did, in February, 1943, discharge certain named employees because of their membership in and activity on behalf of the Union, and did thereby discriminate in regard to the hire and tenure of employment of said employees, and did thereby discourage membership in the Union, all contrary to Section 8(3) of the Act.

Fourth, that respondent, through its officers and agents, had, contrary to Section 1 of the Act, coerced and restrained its employees in the exercise of the rights guaranteed in Section 7 of the Act, and had thereby engaged in unfair labor practices within the meaning of Section 8(1) of the Act, and had discriminated against the Union by making derogatory and uncomplimentary statements to employees regarding the Union; by stating to employees that Union membership would not serve to better their wages or conditions of employment; that membership would in fact render such conditions less favorable; by referring to members and officials of the Union as racketeers and undesirable foreigners; by threatening to cancel smoking and other privileges and to reduce or eliminate overtime work; and by denying the privilege of the Company's bulletin boards to the Union, although permitting the use of its bulletin boards by the Association without limitation or restraint [R. 8-10].

The Trial Examiner found that the first and second charges were supported by substantial evidence, but found that there was no evidence to support the third charge, that respondent had discriminately discharged its employees, or TO SUPPORT THE FOURTH CHARGE OF DISCRIMINATION AGAINST THE UNION<sup>3</sup> [R. 52-53].

The Board by its decision and order adopted the findings of fact and conclusions of the Examiner, subject only to the statement *that no single fact* set forth in the Intermediate Report, *considered alone*, justified the conclusion that the Association was Company-dominated, but that under all of the circumstances, taken together, including particularly the financial assistance given by the respondent to the Association, the activity of leadmen (particularly Margaret Goebel) in behalf of that organization, and the circumstances leading to and surrounding the execution of the 1943 contract, it found that the Association was so dominated [R. 85].

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<sup>3</sup>The fact that the Trial Examiner (his findings are adopted by the Board) has found that there was no evidence to support the only charges of discrimination which are set forth in the charge or alleged in the complaint is a factor to be considered by this court in determining whether or not other facts found support the finding of domination of and interference with the Association (*N. L. R. B. v. Citizen-News Co.* (C. C. A. 9), 134 F. (2d) 970, 973).



### Outline of Argument.

There is no evidence to support the finding of the Board that respondent promoted, dominated and interfered with the formation of the Association.

By reason of the rider to the Appropriation Act of 1944 the Board was without power to make and enter the order which it here seeks to enforce.

There being no evidence that respondent had any part in the formation of the Association, the Board is precluded by the rider to the Appropriation Act of 1945 from seeking enforcement of the order made in violation of the rider to the 1944 Act.

Inasmuch as the Board has proceeded in making its order and seeking enforcement thereof contrary to the expressed will of Congress and through the illegal expenditure of the funds appropriated to the Board, it does not come into this court with clean hands, and the court should refuse to enforce the order.

The evidence shows without conflict that respondent has at all times been neutral and impartial and has not interfered with its employees in the exercise of their rights granted them under Section 7 of the Act.

The acts of minor supervisory employees designated "leadmen", who were members of the Association, were not coercive in character and are not attributable to respondent.

The order is so broad in its scope that it exceeds the power of the Board.

### Argument.

(Italics ours unless otherwise noted.)

As we have hereofore pointed out, the Board held that there was no single fact found by the Trial Examiner to be true which would justify the conclusion that respondent dominated the Association, but held that the aggregate of all of the facts shown by the record justified that conclusion.

By its brief filed herein petitioner seeks, by a narration of certain probative facts which the Trial Examiner found to be true, to sustain the ultimate fact found by the Trial Examiner and the Board, that the Association was Company-dominated and that, therefore, its order for disestablishment of the Association and the vitiation of respondent's contract therewith is justified.

In this brief we shall show that, in the light of the background established by the whole record, the probative facts found by the Trial Examiner to be true do not support the ultimate fact of Company domination. We shall further show that there is no evidence to uphold certain of the findings of the Board upon the probative facts.

Before analyzing the specific facts found by the Trial Examiner to be true and the evidence which is claimed as the basis for those findings, we will set forth the background shown by the record against which those facts must be viewed. For, as is said by this court in *National Labor Relations Board v. Union Pacific Stages*, 99 F. (2d) 153, 171:

"To arrive at correct conclusions we must examine the facts in their proper setting."

or as the proposition is stated by another court,

“In making such an analysis of the evidence in a case such as the one before us the evidence relied on by the Board should be considered in the light of the general background of labor conditions prevailing in the petitioner’s plant.”

*Quaker State Oil Refining Corp. v. National Labor Relations Board* (C. C. A. 3), 119 F. (2d) 631, 632.<sup>5</sup>

#### BACKGROUND.

The facts which constitute the background against which the facts relied upon by the Board must be judged, as shown by the evidence or which must be assumed for want of evidence to the contrary, are:

Prior to 1941, respondent had been engaged in the business of manufacturing radio receiving sets and refrigerators, employing at the peak of its production seasons not over 300 people, and during its slack seasons about 140 [R. 173].

On November 30, 1940, respondent’s plant was completely destroyed by fire. It was rebuilt, and upon its being rebuilt the conversion of the plant from the production of radios and refrigerators to the production of war materials at once commenced, and shortly the plant was entirely given over to the production of war materials.

Prior to 1937, there had been no labor organization of any kind in respondent’s plant. Early in 1937, a group of respondent’s production employees conceived the idea

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<sup>5</sup>See also: *Jefferson Electric Co. v. N. L. R. B.* (C. C. A. 7), 102 F. (2d) 949, 955-956; *N. L. R. B. v. Sun Shipbuilding & Dry Dock Co.* (C. C. A. 3), 135 F. (2d) 15, 21.

of forming a union of the employees in the respondent's plant [R. 170]. This resulted in the formation of the Association at about the same time the C. I. O. attempted to organize these same employees [R. 189]. There is no evidence that during the resulting race between the Association and the C. I. O. for members, respondent in anywise exhibited any preference for one of the rival organizations as against the other, or assisted either in its drive for members.

On May 1, 1937, the C. I. O. filed a petition for certification of representatives pursuant to Section 9(c) of the National Labor Relations Act. Pursuant to that petition an election, consented to by respondent, was held and was won by the Employees Mutual Association, and as a result the Association was certified as the collective bargaining agent of respondent's employees [R. 342]. Respondent then, as required by the Act, negotiated with the Association and entered into a contract with it. New contracts were negotiated each year.<sup>6</sup>

From May, 1937, to 1943, there was no labor activity in the sense of organizational drives by labor unions at respondent's plant. On about January 10, 1943, the charging union commenced its organizational efforts at the plant [R. 307].

There have never been any labor troubles in respondent's plant, and *there is not a single word in the record*<sup>7</sup>

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<sup>6</sup>Only the contracts of 1942 and 1943 are contained in the record [see R. 432, 443, 582].

<sup>7</sup>Any want of evidence is not due to the Board's lack of opportunity to secure it, as it was stipulated that respondent gave to the Board every opportunity and facility to interview employees and to examine all records [R. 609].

*that respondent at any time by word or deed indicated any antagonism towards the Union or the C. I. O., or any preference for the Association, or adopted anything but a neutral and impartial attitude in the contest between the Association and the C. I. O. in the first instance, and the Association and the I. A. M. in the second.* On the contrary, the evidence shows without conflict that the Union and the Association were granted equal privileges within respondent's plant in their attempts to induce respondent's employees to select their organization as the bargaining agent for the employees; that the Union openly maintained within respondent's plant, without opposition from respondent, a committee charged with the duty of soliciting, and who did solicit, Union members within the plant [R. 196, 199, 205-206, 307-311]; that one of the members of this committee wore a badge designating him as a Union steward within the plant, and that other members of the committee and a substantial number of other employees wore Union badges at work, and the respondent neither objected to these actions nor discriminated against these employees [R. 196, 199, 308, 311]. During its organizational drive the Union was permitted to and did use respondent's bulletin boards and the inside walls of the plant to post and keep posted literature soliciting memberships in the Union, announcement of Union meetings (to which all employees were invited in order to induce them to choose the A. F. of L as their bargaining agent) and even a letter signed by an officer of the Union charging

respondent with unfair labor practices and stating "that the 'Employees Mutual Association' is not, in fact *or in the view of the Board*, the agent of the employees."<sup>8</sup> [R. 216-217; 219-222; 416-429.]

There is no evidence whatsoever that any officer, superintendent, foreman, or even leadman, in respondent's employ ever uttered any threats or coercive statements to any employee in an attempt (or at all) to induce the employee either to join the Association or not to join the Union.

It is against this background of complete neutrality and impartiality on the part of respondent and of equal and unfettered opportunity on the part of both the Union and the Association to present the merits of their organizations as bargaining agent for the employees, and of unhampered opportunity to the employees to choose between the Association and the Union as their bargaining agent, that the facts found by the Board and relied upon by it to establish the ultimate fact that the Association is a company-dominated one, must be viewed.

The facts upon which the petitioner in its brief relies to support its petition for enforcement of its order fall into the following general classifications:

- (1) That respondent promoted and encouraged the formation of the Association;
- (2) Use of respondent's premises by the Association;
- (3) The activities of leadmen;

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<sup>8</sup>Respondent was not permitted to prove either that the Board had prejudged this case, or that the italicized statement was false [R. 281-285].



- (4) The execution by respondent in 1943 of a contract with the Association and the circumstances surrounding the execution of that contract;
- (5) The holding of Association meetings off company premises but during working hours;
- (6) A raise in wages given to certain women employees;
- (7) Financial support of the Association.

The petitioner in its brief does not and cannot, in the face of the Board's order, rely on any one of these facts, but relies upon them collectively.

#### FORMATION OF THE ASSOCIATION.

The *only evidence* as to any participation by respondent in the formation of the Association is the testimony given by one Semple who, in the years 1937 to 1939, was a Cost Accountant and Personnel Manager for respondent. His testimony was brief and is set forth at pages 169 to 188 of the Record. The only fact to which he testified, which has any bearing on the formation of the Union, was his testimony that early in 1937 a group of employees asked his advice as to how to form a union, and that he told them that the only advice he could give them would be to go to the Public Library and get that information, that he particularly told them to get "Roberts' Rules of Conduct" [R. 174].

Certainly no finding of domination or interference with the formation of the Association could be based upon this bit of evidence. We cannot conceive how Mr. Semple

could have adopted a more neutral or less interfering attitude.

It has repeatedly been held that statements such as were made by Semple do not constitute a basis for or evidence of a charge of interference with the formation of an independent union.<sup>9</sup>

Petitioner implies (Br. pp. 4-5) that Semple arranged an organizational meeting of the E. M. A. on respondent's premises and that he insisted that the attendance at the meeting be confined to those "interested" in the Association. This is a misstatement or misconception of the evidence. Simple did arrange for and permit one meeting of the Association to be held in the plant. This was not an organizational meeting, nor was it open to those only "interested" in the Association, but was limited to those who were already members [R. 174-176]. The record is silent as to the date of this meeting and it cannot be determined from the record whether the meeting was held before or after the Association, in May of 1937, had been certified as the bargaining agent of the employees. It is clear, however, that this meeting had nothing to do with the formation of the Union, inasmuch as it was limited to the members of the Association, which presupposes that it had already been formed. The burden was upon the Board to show that this meeting was a part of the formation of the Association if it seeks to use the meeting as evidence that respondent took part in the formation of the Asso-

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<sup>9</sup>E. I. Dupont de Nemours & Co. v. N. L. R. B. (C. C. A. 4), 116 F. (2d) 388, 398-399; L. Greif & Bro. v. N. L. R. B. (C. C. A. 4), 108 F. (2d) 551; Virginia Electric & Power Co. v. N. L. R. B. (C. C. A. 4), 115 F. (2d) 414, 416-417, 419; N. L. R. B. v. Mathieson Alkali Works (C. C. A. 4), 114 F. (2d) 796, 799; N. L. R. B. v. Union Pacific Stages (C. C. A. 9), 99 F. (2d) 153, 178.

ciation, and the Board failed to sustain its burden of so proving.

We respectfully submit that there is not a scintilla of evidence to support the allegations of the complaint and the finding of the Board that the Company interfered with and promoted the formation of the Association, or to prove that the Association was anything more than the result of a spontaneous act of employees in the exercise of their rights under Section 7 of the Act.

**After the Enactment of the Appropriation Act of 1944, the Board Was Precluded From Making Any Order Affecting the Contract Between Respondent and the Association, and by the Appropriation Act of 1945 Was Precluded From Seeking Enforcement of an Order Made in Violation of the 1944 Appropriation Act.**

The National Labor Relations Board Appropriation Act of 1944 [see Appendix B, Petitioner's Br.] became effective July 1, 1943, during the hearing of this matter before the Trial Examiner. By the rider to this Act, which is set forth in Appendix B of Petitioner's brief, the Board was prohibited from using any of the funds appropriated in connection with a complaint case arising over an agreement between management and labor, which had been in existence for three months or longer without complaint being filed.

The record shows without conflict that at the time the charges herein were filed a contract between the Association and respondent had been in effect for nearly a year [R. 582-586], and that the renewal of that contract had

not yet been executed when the amended charges were filed.

Respondent repeatedly during the trial objected to the Board's proceeding and moved to dismiss the proceeding, basing its objections and motion upon the Appropriation Act of 1944 [R. 332-339, 411-412, 450]. The Board, nevertheless, proceeded with the hearing, the Trial Examiner made his findings and recommendations, and the Board entered the order of which it now seeks enforcement.

Upon a request by the National Labor Relations Board for a ruling, the Comptroller General of the United States ruled that the words "without complaint being filed" in the Act referred to the filing of a charge, not the filing of the complaint based upon the charge,<sup>10</sup> and further ruled that in a case such as the one at bar, where after the filing of a charge of unfair labor practices a new contract is entered into between a union and an employer and no amendment to the charge is filed within three months after the new contract is entered into, the Board is prohibited from proceeding under the original charge and ordering disestablishment of the alleged company-dominated union.<sup>11</sup> The Comptroller General further ruled that the Appropriation Act of 1944 prohibited the use of the funds appropriated, even though the union with which the em-

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<sup>10</sup>See p. 1, Appendix B.

<sup>11</sup>See "Case 3(c)," Appendix B.

ployer had contracted was formed in violation of Section 8(2) of the Act.<sup>12</sup> These rulings of the Comptroller General are conclusive upon the rights of the Board under the riders (*Skinner & Eddy Corp. v. McCarl*, 275 U. S. 1, 4-5, note).

The Board recognized this ruling of the Comptroller General as applicable to the present case, and because thereof moved this court to remand this case to the Board.<sup>13</sup> While this motion was pending, Congress passed the Labor-Federal Security Appropriation Act of 1945.<sup>14</sup> This Act also contained a rider, the substance of which we will hereafter note, but which was proposed as an amendment to the rider to the 1944 Act for the purpose of clarifying that rider, and continuing in effect its provisions limiting and curtailing the rights of the Board. Upon the Labor-Federal Security Appropriation Act of 1945 becoming effective, petitioner asked leave to withdraw its motion to remand, upon the ground that under that Act it was permitted to proceed because the Association here *was formed* in violation of Section 2 of the Act.<sup>15</sup>

By the Labor-Federal Security Appropriation Act of 1945, Congress provided that no part of the funds ap-

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<sup>12</sup>See "Cases 1, 2 and 3," Appendix B.

<sup>13</sup>See Motion to Remand, filed herein on the 2d day of May, 1944.

<sup>14</sup>See Appendix C, Petitioner's Brief.

<sup>15</sup>See telegram addressed to this court by Malcolm F. Halliday, Associate General Counsel for the Board, under date of July 1, 1944.

propriated should "be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof," between management and labor, which had been in existence for three months or longer without complaint being filed by an *employee* or *employees* of such plant, with the proviso that the funds might be used in cases where the union which was a party to the contract *had been formed in violation of Section 8(2)*.

In the case at bar, the Board proceeded with its hearing and entered its order in violation of the Appropriation Act of 1944. It has tacitly admitted as much by its motion to remand.

It is now attempting to enforce the order which it entered through an illegal use of public funds and in violation of the express purpose of Congress in enacting the rider to the 1944 Appropriation Act, despite the fact that there is no evidence to support its findings and assertion that respondent "dominated and interfered with the formation \* \* \* of the Association", and despite the fact that the charge herein was not filed by an employee or employees of respondent, but by a "raiding" union which is attempting to disrupt the existing relationship between respondent and the certified bargaining agent of its employees.



**The Board in Administering the Act Must Do So in a Manner Which Will Accommodate and Effectuate the Policies of the Act With the Public Policy as Evidenced by Other Statutes.**

In *National Labor Relations Board v. Thompson Products, Inc.* (C. C. A. 9), 141 F. (2d) 794, this court held that it was not the intent of Congress to amend the National Labor Relations Act so as permanently to deprive the Board of the right to prosecute complaint cases arising under Sections 8(1) and 8(2) of the Act.

It was, however, the intent of Congress to suspend the operation of the Act and the power of the Board to prosecute such cases during the time the Appropriation Act should be in effect, so as to stabilize labor conditions in industry and to prevent hindrance of the war effort through the disruption of contractual relations between employers and employees by the prosecution of unfair labor practice cases under Section 8(2) of the Act.

This intent is made clear by the statements of the proponents of the rider to the 1944 Act, quoted and referred to in *National Labor Relations Board v. Thompson Products, Inc.*, *supra*, and if we understand the decision correctly is what this court declares the intent of Congress to have been.

That it was the intent of Congress to announce as the policy of Congress and the Government that the National Labor Relations Act should not be used during the present emergency to prosecute cases of this kind is made doubly clear by its having continued this limitation in effect through the passage of the rider to the 1945 bill and the statements of the proponents of that rider.

In reporting the 1945 Appropriations Bill to the House of Representatives, Congressman Hare stated in part as follows:

"It will be recalled that with the hope of facilitating the work of this Board, curtailing the practice of raiding, obviating unnecessary friction in war plants, and thereby promoting maximum production, a provision was placed in the Appropriations Bill last year that where an agreement entered into between management and labor and no dissatisfaction had been or should be expressed within three months following the execution of the agreement, a limitation was placed on the appropriation for use by the Board to consider a complaint filed after the expiration of three months and during the life of the appropriation. \* \* \* some criticism of the provisions arose. The committee, therefore, in its recent hearings afforded all interested parties an opportunity to appear with the idea that with the additional information the provisions might be *amended* so as to meet the objectives and remove any doubt as to the intention of the Congress. \* \* \* and we now feel that the revised provision should *accomplish the original purpose* and meet with little or no criticism."

90 Congressional Record, 5191, May 29, 1944.

In reporting the 1945 Appropriation Bill to the House of Representatives, the committee made the following statement with regard to the rider to the bill:

"A limitation was placed in the 1944 bill upon the expenditure of funds in consideration of complaint cases between management and labor on contracts that were in effect for three months. *The purpose of that limitation, as was clearly understood by the Con-*

*gress at that time, was to promote production in the war effort; prevent unnecessary and unjustified raidings in war industrial plants, and the slowing down of production."*

H. R. Report 1526, accompanying H. R. 4899, May 27, 1944.

In *National Labor Relations Board v. Thompson Products, Inc.*, *supra*, the Board's order was made and the petition for its enforcement filed in this court long before the passage of the 1944 Appropriation Act, and this court held (141 F. (2d) 794) that there was nothing to indicate that *the purposes of the rider* would be effectuated by the inclusion of court proceedings within its scope where those proceedings were pending at the time of the passage of the Appropriation Act. That is not the situation in the case at bar. Here the Board proceeded with the hearing, the Trial Examiner made his intermediate report, and the Board made its order, after Congress, by the Appropriation Act, had suspended its power so to do.<sup>16</sup>

Congress having announced by the 1944 and 1945 Appropriation Act that as a matter of public policy labor conditions in war plants should be stabilized and not disrupted by proceedings such as the one involved in the case

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<sup>16</sup>Two things should be noted here: first, that the 1944 Act did not permit prosecution of complaint cases even though the union which was a party to the contract attacked was formed in violation of Section 2 [see Case 3(a), Appendix B]; second, that the Board by its order based its right to proceed solely on the contention that the 1943 contract between respondent and the Association, or the new contract, had not been in existence for three months without a complaint being filed [R. 86-87], a contention that was found (as we have heretofore shown) to be invalid by the Comptroller General and which was abandoned by the Board when it filed its notice to remand herein.

at bar, the Labor Board's power under the Act was limited to proceeding in such a manner as would harmonize with the public policy so announced by Congress.

In speaking of the power of the Board under the Act and its duty to harmonize the Act with the public policy as enunciated in other statutes, the Supreme Court, in *Southern S. S. Co. v. National Labor Relations Board*, 316 U. S. 31, at 46-47, 62 S. Ct. 886, 894, said:

"This authorization<sup>17</sup> is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to define them. (citing authorities) \* \* \* It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."<sup>18</sup>

So, in the case at bar, it being the purpose of Congress that the Act should not be used to disrupt labor conditions by vitiating contracts between an employer and his employees through the disestablishment of one of the parties to that contract on the basis of charges by a raiding union of unfair labor practices, the Board was deprived

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<sup>17</sup>*National Labor Relations Act*, Sec. 10(c).

<sup>18</sup>See also *N. L. R. B. v. U. S. Truck Co.* (C. C. A. 6), 124 F. (2d) 887.

of the power to vitiate such contracts and order disestablishment of unions which it found to be company-dominated, but was left free to use other remedies to effectuate the purposes of the Act, such as to order the employer to cease and desist from interference with the union with which it had contracted (not including a prohibition against contracting with that union) or to order the reinstatement of employees discriminatorily discharged.

#### THE BOARD COMES INTO THIS COURT WITH UNCLEAN HANDS.

The Board comes before this court in but one of its capacities, that of a party litigant. As such it asks this court to use its equity power to enforce an order made and entered by it contrary to the express will and declared purpose of Congress, and which could only have been made through the illegal use of funds appropriated to it. When the order was made it had no right to use its funds to proceed with the hearing and make its findings and order, even though the respondent had taken a part in the formation of the Association contrary to the provisions of Section 8(2) of the Act. But even if in such a case it might have proceeded under the 1945 Appropriation Act, despite its original wrongful act, there are no facts here to support its finding and contention that the respondent did have any part in the formation of the Association.

The Board, therefore, does not come before this court with clean hands, and this court will not lend itself to the accomplishment of the purposes of the Board to proceed



despite the declared policy and purpose of Congress that it should not proceed, nor will it aid the Board in the enforcement of an order which was made, and can only be enforced, through the illegal expenditure of the funds appropriated (*Morton Salt Co. v. Suppiger*, 314 U. S. 488, 62 S. Ct. 402; *Malts v. Sax* (C. C. A. 7), 134 F. (2d) 2; *Bell & Howell Co. v. Bliss* (C. C. A. 7), 262 F. 131, 134-135).

It will undoubtedly be argued by the Board that respondent may not challenge the Board's use of its funds because respondent has suffered no direct injury not suffered by the public at large and which is attributable to the unlawful and unauthorized expenditure by the Board of its funds, relying upon decisions of the Supreme Court, such as that in *Alabama Power Co. v. Ickes*, 302 U. S. 464, 478-480.

Such a contention is not sound in the case at bar. Here respondent is not asking affirmative action by this court in enjoining the Board in the use of funds appropriated to it. Nor, if the court upholds our contention that the Board is not here with clean hands, is it called upon to take any affirmative action. It is only called upon to refuse to act in aid of a clearly illegal expenditure of public funds and a clear attempt by the Board to exercise its powers contrary to the expressed will of Congress. Further, respondent here is suffering a direct and private injury. The order of the Board that respondent disestablish the Association and dishonor its contract with the respondent, is not directed at the public nor, is any member of the public bound to obey it or suffer, except incidentally, by it. It is directed solely at the respondent.



It cannot be argued that because the order is based on the finding of the Board that respondent was guilty of a violation of Section 8(2) of the Act, no legal right of respondent is infringed by the order, and that respondent cannot challenge the illegality of the Board's expenditure of its funds or assert that the Board comes here with unclean hands. Such a contention is not sound for two reasons:

*First*, respondent's contract with the Association was not one made against public policy or one which was wrongful in itself, but was only one which became unenforceable when the Board had found upon substantial evidence that such a contract deprived the employees of their free choice of a bargaining agent and should be disregarded in order to effectuate the purposes of the Act. When Congress took away from the Board temporarily the power to effectuate the purposes of the Act by proceedings and orders such as the ones here, it left respondent with the right to deal with its employees upon the basis of its contract, undisturbed by any order of the Board. When, therefore, the Board proceeded here in violation of the expressed will of Congress, respondent suffered a direct and private injury not suffered by the public, for it is its contractual relations, and not the contractual relations of any other person, that are affected by the order.

*Second*, the court is not limited in denying injunctive relief because of the unclean hand of a suitor, even though no legal right of the person against whom the relief is sought would be infringed if the relief were granted (*Morton Salt Co. v. Suppiger, supra*; *Malts v. Sax, supra*; *Bell & Howell Co. v. Bliss, supra*).

It will further be argued that the Board's use of its funds is not subject to judicial review because such a review would burden the courts with "the minutiae of detail indigenous to accounting." That the Board has no right to use its funds in a case such as the one at bar has already been determined by the Comptroller General, and this court is not called upon to supervise any accounting between the Board and the Comptroller General, but is only called upon to apply the ruling of the Comptroller General to the admitted facts in the case at bar. The situation is no different than if a writ of mandate were sought from this court to compel the Board to exercise its power and to act upon a charge filed, where the Board answered that by the Appropriation Act, as interpreted by the Comptroller General, it was prohibited from expending its funds in investigating or acting upon the charge filed. In either such a case or the case at bar, the court is not called upon to determine how much money the Board shall spend or whether or not there is sufficient money in the appropriation to enable it to proceed. It is only called upon to hold that here the petitioner has proceeded, and is still proceeding, in direct violation of the Appropriation Acts and contrary to the ruling of the Comptroller General.

In support of its position that the propriety of the Board's expenditure of its appropriation is not a matter with which this court can concern itself, the Board cites not only *National Labor Relations Board v. Thompson Products, Inc.*, *supra* (which case clearly did not pass upon this question), but *National Labor Relations Board v. Cowell Portland Cement Co.*, which it states was decided by this court without opinion on September 9, 1943.

We do not know upon what grounds or upon what factual basis this court made its order in the *Cowell* case. We are advised, however, that counsel for the Board in *National Labor Relations Board v. Thompson Products, Inc.*, expressly withdrew its claim that that order of the court was applicable to a case such as the one at bar.<sup>19</sup>

#### USE OF RESPONDENT'S PREMISES.

One of the matters upon which the Board relies to uphold its findings of respondent's interference with and domination of the Association is the use of respondent's premises by the Association for certain of its activities. These activities, with the exception of one Association meeting that was held on respondent's premises in 1938, consisted of the solicitation of membership in the Association and the collection of dues from members of the Association on the Company's premises. That the members of the Association did solicit other employees to join their Association and did collect dues from members upon respondent's premises, and that some of this activity took place during time for which the employees were paid by respondent, we do not deny.

There is no evidence that these activities were brought to respondent's attention, but assuming that it may be inferred that respondent knew of some of these activities, it still (in the light of other facts) cannot be inferred that by failing to object to this activity respondent was influencing or interfering with the Association or attempt-

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<sup>19</sup>See pages 2 and 3, Respondent's Supplemental Brief, *N. L. R. B. v. Thompson Products, Inc.*, Action No. 10383 in the files of this court.

ing to influence or interfere with its employees in their choice of a bargaining agent.

The evidence shows without conflict that respondent permitted the same kind of activities to be carried on in its plant by the members and committees of the I. A. M., and the evidence fails to show that the respondent ever adopted anything but a neutral and impartial attitude in regard to the choice by its members of a bargaining agent.

The evidence shows, as we have heretofore pointed out, that during the entire period when the I. A. M. was seeking to organize respondent's employees, it maintained a committee in respondent's plant, the head of which wore a button designating him as the Union steward, and that this committee solicited and obtained within the plant over 100 of the total of 138 members which were secured by the I. A. M.

The evidence further shows that respondent permitted the posting on the walls of its plant and upon its bulletin board announcements of I. A. M. meetings, and literature which solicited membership in the I. A. M., including membership applications and authorization cards [R. 216, 417-419, 421-423, 423-424, 426-430].

The Board has found that there is no evidence to support any of the specific charges of discrimination, which are contained in the charge and alleged in the complaint [R. 52-53].

There is no evidence in the record that respondent attempted in any way to interfere with or curb the I. A. M.'s activities. Petitioner asserts the contrary, basing its assertion on the fact that on *one occasion* a foreman stated

to an employee, who was soliciting for the I. A. M., that "that was one of the A. F. of L. rules that they were specifically told not to \* \* \* (violate)" but it fails to call attention to the fact that no disciplinary action was taken against this employee, and certainly a statement by the foreman that solicitation was against an A. F. of L. rule did not show any objection thereto on the part of respondent.

In view of the uncontradicted evidence as to the activities of the Union, to which we have heretofore called attention, there is no basis for the assertion by petitioner that the activities of the I. A. M. were sporadic.

The evidence showing that respondent had at all times remained neutral and had at no time expressed any hostility to the Union or preference for the Association, the fact that respondent did not take affirmative action to keep the Association from soliciting dues and memberships within the plant, coupled with the fact that it took no action against the same activities on the part of the Union, fails to constitute any evidence of interference by the respondent, but on the contrary conclusively shows that respondent was acting in furtherance of the right of its employees to have a free choice in the matter of a bargaining agent.

In what better way could the respondent have implemented the rights guaranteed to the employees by the Act than permitting rival organizations equal opportunity



to contact its employees when they were assembled in the plant and to there place before them their relative merits as bargaining agents for the employees? That the I. A. M. was given full and equal rights and opportunities within the plant is apparent not only from the evidence as to the activities of its membership committee within the plant, but from the reading of the literature which it was permitted to post and keep posted in respondent's plant [see particularly A. F. of L. posters, R. 417-430].

Petitioner cites five decisions to uphold its position (Br. p. 18, note 2). In each of them there was either a denial of equal rights to the outside union, or the use of the company's premises by the so-called company union was accompanied by outright hostility to outside unions on the part of the employer.

In *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, the independent union was the successor of an admittedly company-dominated union which was maintained down to the date on which the independent was about to take over. The company had maintained a declared hostility towards outside unions and had practiced industrial espionage. The company discharged two employees for union activity in its plant, while permitting similar activity on the part of employees who were members of the independent.

In *Heinz v. N. L. R. B.*, 311 U. S. 514, there was no evidence that the outside union was either permitted to solicit or prohibited from solicitation within the plant, but the solicitation in the plant on behalf of membership in the



independent union was a part of a concerted effort on the part of the company's superintendent and general foreman to disparage the outside union and prevent the employees joining it through threats of discharge, loss of work or privilege.

In *N. L. R. B. v. Boswell*, 136 F. (2d) 585 (decided by this court) the employer not only was avowedly against the outside union but, far from permitting equal opportunities to that union with the independent union, assisted in running all union members out of the plant and at the same time actively assisted in the formation of the independent union.

In *N. L. R. B. v. Germain Seed & Plant Co.*, 134 F. (2d) 94, instead of the employer being neutral and permitting an outside union equal freedom with the inside union in the solicitation of members, the employer had initiated the formation of the company union, furnished the organizing committee (which later became the alleged bargaining agent of the employees) and, after the formation of the union, permitted every union activity to take place in the company's plant and on its time.

In *Titan Metal Mfg. Co. v. N. L. R. B.*, 106 F. (2d) 254, the activities in respondent's plant consisted of not only the solicitation of members for a company-fostered union, but the holding of all organizational meetings within the plant and on company time, and were a component part of the declarations by the employer against the out-

side union and statements that the employer would have nothing to do with the outside union.

On the contrary, whenever independent union activities on an employer's premises have been coupled with complete neutrality and impartiality on the part of the employer and the granting of like privileges to an outside union, the courts have refused to uphold a Board's finding that the independent's use of company premises constitutes any violation by the employer of the Act.

The principle of this matter is well stated by Judge Parker of the Circuit Court of Appeals for the Fourth Circuit, in *National Labor Relations Board v. Mathieson Alkali Works*, 114 F. (2d) 796, at 801:

"The fact that respondent made no attempt to curb solicitations for association membership on company property would be a damning circumstance, were it not for the fact that respondent's attitude towards the rival union was precisely the same. \* \* \* So far as we can see from any evidence called to our attention, the attitude of respondent was that of strict neutrality. Membership in the union, as well as membership in the association, was openly solicited on company property during working hours; and certain of the foremen, as well as certain other employees, seem to have been quite active in the union cause."<sup>21</sup>

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<sup>20</sup>See also: *Foote Bros. Gear & Machinery Co. v. N. L. R. B.* (C. C. A. 7), 114 F. (2d) 611, 617-618; *Jefferson Electric Co. v. N. L. R. B.*, 102 F. (2d) 949, 956; *Ballston-Stillwater K. Co. v. N. L. R. B.*, 98 F. (2d) 758, 761-762; *N. L. R. B. v. Sun Shipbuilding & Dry Dock Co.*, 135 F. (2d) 15, 21; *N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 332, 342, 59 S. Ct. 508.

**The Board's Finding, That Respondent Interfered With and Dominated the Association and Interfered With Its Employees in Their Free Choice of a Bargaining Agent Through the Activities of Minor Supervisory Employees Called Leadmen, Is Not Supported by and Is Contrary to the Evidence.**

LEADMEN, THEIR ACTIVITIES, AND  
RESPONDENT'S RESPONSIBILITY THEREFOR.

Prior to converting its plant to war production, respondent did not employ leadmen. But due to the labor shortage after the factories of this country were turned to the production of war materials, respondent was unable to get sufficient experienced operators in its machine shop. Those who were experienced were therefore given the duty of sharpening the tools for and setting up a group of machines and instructing inexperienced persons in how to push the button or pull the lever that would make the machine operate and turn out the part which it had been set up by the leadmen to machine [R. 56-59; 592-595]. These leadmen had no power to hire or fire, but could make recommendations for discharges in cases of incompetence, drunkenness or disorder. Employees were only discharged after the foreman or superintendent had investigated the facts reported by the leadmen [R. 127-128, 591-592, 598-600]. Their work and the work of those inexperienced hands whom they instructed was supervised by a foreman, and the foreman, in turn, was supervised by the machine shop superintendent. It is admitted that these leadmen were entitled to membership in any union of production employees.

Several employees whom the Board found to be leadmen were members of the Association and participated in its activities. Their activities consisted of solicitation of other employees to join the Association, the collection of dues from members of the Association, and acting in one case as an officer of the Association and in another on an Association committee. In no instance did any leadman attempt to induce membership in the E. M. A. or attendance at its meetings by threats of any kind or by promises of reward, nor in any instance did they disparage the Union or indicate any desire on the part of management that its employees should designate the Association as their bargaining agent, or that the respondent was hostile to the Union.<sup>21</sup>

It is seemingly petitioner's contention that because the so-called leadmen were instructors of and had some slight supervisory duties in connection with the work of other employees, respondent was *ipso facto* charged with responsibility for their acts.

It is undoubtedly true that an employer can be held responsible under the Acts for the deeds and words of minor supervisory employees, and even employees without any supervisory capacity, where the circumstances are such that it may reasonably be inferred that they are acting for and expressing the views of management. Management is not, however, responsible for the acts of minor supervisory employees who are members of an independent union where management has been entirely neutral and

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<sup>21</sup>We will later examine the evidence which is reflected by this paragraph, with proper record references.

impartial and has taken no position favoring the independent union or hostile to the outside union, and the acts of leadmen are not coercive in character and do not pretend to reflect the attitude of management. Our contention is supported by all of the decisions, including those relied on by petitioner.

The case chiefly relied upon by petitioner and which is most often cited as showing that an employer is responsible for the activities of minor supervisory employees is *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 61 S. Ct. 83. In this case the employer had exhibited an "open and avowed hostility to the charging union." It had maintained an admittedly company-dominated union, which it only abandoned in favor of an A. F. of L. union in order to defeat the C. I. O. union. It not only *permitted solicitation for the A. F. of L. on the company premises and company time, and denied this privilege to the C. I. O. union, but discharged five officials of the C. I. O. for union activity*. Four foremen, who had been active in the company-dominated union, switched their allegiance to the A. F. of L. and, with the knowledge of the company superintendent, attempted to *coerce* other employees to affiliate with the A. F. of L. by stating, among other things, that the employer would not deal with the C. I. O. and that those who did not join the A. F. of L. would be discharged, and made offers of increase in rating to induce membership in the A. F. of L. It was under these facts that the Supreme Court held the employer chargeable with these coercive acts of its foremen, which clearly sought to make effective the avowed purpose of the employer to defeat the C. I. O. While this decision holds that it is not necessary that an



employer be responsible under the doctrine of *respondeat superior* before he can be held chargeable with the statements and deeds of minor supervisory employees, it does not hold that an employer is responsible merely because the statements or acts are those of a leadman.

*National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 61 S. Ct. 358. In this decision the court had before it, not the acts of minor supervisory employees, such as the leadmen in the case at bar, but the acts of foremen, and in holding that the acts of these foremen might be attributed to management makes doubly clear that they are attributed not because of their supervisory capacity, but because the avowed hostility of the employer to an outside union was reflected by the coercive acts of the leadmen and that the employer thus brought pressure upon its employees in their choice of a bargaining agent. In this regard the court said, in part:

“Nor does the Board lack the power to give weight to the activities of some of the supervisory employees on behalf of Independent, even though they did not have the power to hire or to fire. As we indicated in *International Association of Machinists v. National Labor Relations Board*, *supra*, the strict rules of *respondeat superior* are not applicable to such a situation. If the words or deeds of the supervisory employees, *taken in their setting*, were reasonably likely to have restrained the employees’ choice and if the employer may fairly be said to have been responsible for them, they are a proper basis for the conclusion that the employer did interfere. If the employees ‘would have just cause to believe that solicitors professedly for a labor organization were acting for and



on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates.' *International Association of Machinists v. National Labor Relations Board*, *supra*. Here such inferences were wholly justified. *The attitude of the employer towards an 'outside' organization was clearly conveyed. When that was followed by solicitation for Independent on the part of the supervisors who had general authority over the men, it would be unfair to conclude that the employees did not feel an actual pressure from the management."*

61 S. Ct. 366.

*Heinz v. National Labor Relations Board*, 311 U. S. 514, 61 S. Ct. 320. Petitioner cites this decision of the Supreme Court to uphold its contention. The decision is not, however, upon its facts in point. In the cited case it was not the activities and statements of mere leadmen (members of a union) that were involved, but statements of the employer's superintendent and foremen acting under his direction, all of these acts being coercive in character (311 U. S. 518) and done with the employer's knowledge and without disavowal on its part (311 U. S. 521).

*National Labor Relations Board v. Pacific Gas & Electric Co.* (C. C. A. 9), 118 F. (2d) 780. By its decision in this case the court makes clear that in order that the acts and deeds of supervisory employees may be charged to management as its acts and deeds, there must be substantial evidence of facts from which it can reasonably be inferred that these employees represented the attitude of the employer and that the acts of these supervisory employees

must be such as to interfere with, restrain or coerce other employees in their choice of a bargaining agent. In the cited case there was substantial evidence that shop foremen, general foremen and the division superintendent (all of whom had greater actual or ostensible authority than the leadmen in the case at bar) had threatened economic action on the part of the employer, including loss of jobs, if the outside union won the election. It is clear that as the statements of the supervisory employees were as to action *that would be taken by management* against the interests of the employees if the C. I. O. won the election; the employees might very reasonably infer that the foremen and superintendent knew whereof they spoke and reflected the attitude of management and were consequently coerced thereby.

The cases we have just discussed are the cases cited and relied upon by the Board. In all of them, except *National Labor Relations Board v. Pacific Gas & Electric Co.*, *supra*, the employers had adopted an attitude hostile to the outside union, so that the employees could reasonably infer that the acts of the minor supervisory employees reflected the attitude of management and were actions taken at its behest. In the *Pacific Gas and Electric Company* case, *supra*, the statements were not made by mere leadmen and were such as to threaten economic action by the employer. In all cases, however, where there is no hostile attitude on the part of the employer which can be reflected by the acts of minor supervisory employees, and where the minor supervisory employees make no threats of action by the employer, or any statements as to its position, it has been uniformly held that it is not reasonable to draw

the inference that they acted for management rather than in their capacity as members of the union of their own choice.

The distinction between the cases relied upon by petitioner and cases such as the one at bar is clearly brought out in *National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co.* (C. C. A. 3), 135 F. (2d) 15, where at pages 20 and 21 it is said:

“But a ‘leader’ is sufficiently detached from management so as to be eligible to organize with other employees for collective bargaining purposes, and both the Association and the complaining Union admitted, and still do admit, such employees (‘leaders’) to membership. *The fact that the duties of the ‘leaders’ exceeded those of ordinary employees is not of itself sufficient to fix the respondent with responsibility* for the petitions merely because it did not act affirmatively to prohibit and prevent the circulation and signing when its knowledge of their existence could not be directly shown but rested entirely upon imputation. It will be found that, where the condemned activities of minor supervisors (*e. g.* ‘leaders’) have been charged against the employer, there was present at least some evidence of open or covert opposition or hostility on the part of the employer to employee self-organization or to a particular union or favoritism of another. Cf. *International Association of Machinists, Tool and Die Makers Lodge No. 35 v. National Labor Relations Board*, 311 U. S. 72, 78, 80, 81, 61 S. Ct. 83, 85 L. Ed. 50. The relevancy of the employer’s attitude towards unions was expressly noted in *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 588, 61 S.

Ct. 358, 85 L. Ed. 368. In that case, the employer's attitude to unions was hostile, *but the attitude can be no less relevant where it is favorable to employee freedom in the matter of self-organization.*"<sup>22</sup>

In the case at bar respondent evidenced no hostility towards the Union or preference for the Association, and did not discriminate between the Association and the Union, but permitted each an equal opportunity to present its merits as a collective bargaining agent. There is no evidence that any leadman asserted any hostility of respondent to the Union or made any threats of action by respondent should the Union be named the bargaining agent.

In connection with their claim that respondent is responsible for the acts of leadmen, petitioner, at pages 22-23 of its brief, cites five cases to the point that the fact that leadmen were members of the Association does not prevent their acts from being attributed to management. We concede that the mere fact that the work of a minor supervisory employee is of such a nature as to entitle him to membership in a union of production employees does not, in and of itself, prevent his speaking for management or prevent a reasonable inference being drawn that he speaks for management, where the other facts shown are such as to permit that inference to be drawn. On the other hand, we do contend that where an

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<sup>22</sup>See also: *N. L. R. B. v. Tex-O-Kan Flour Mills Co.* (C. C. A. 5), 122 F. (2d) 433, 438; *E. I. Dupont de Nemours v. N. L. R. B.* (C. C. A. 4), 116 F. (2d) 388, 400; *N. L. R. B. v. Mathieson Alkali Works* (C. C. A. 4), 114 F. (2d) 796, 802-803; *Martel Mills Corp. v. N. L. R. B.* (C. C. A. 4), 114 F. (2d) 624, 633-634; *N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 332, 342, 59 S. Ct. 508, 513.

employee who holds a minor supervisory position, without any real authority to speak for management, is also entitled to be and is a member of an independent union, it cannot be inferred that he speaks for management if, under all of the facts, it is equally inferrable that he is acting of his own volition on behalf of the bargaining agent of his choice. In other words, if it is just as reasonable to draw the inference that he acted for his Union and of his own volition as it is to infer that he acted for management, then there is no evidence that he acted for management (*Gunning v. Cooley*, 281 U. S. 90, 94; *Stevens v. The White City*, 285 U. S. 195, 203-204; *Pennsylvania R. R. Co. v. Chamberlain*, 288 U. S. 333; *Cupples Co. Mfg. v. N. L. R. B.*, 106 F. (2d) 100).

If this were not true, the Board could prove that management interfered with and dominated a union by merely proving that minor supervisory employees, members of the union, took part in its affairs.

In *Cupples Co. Manufacturers v. National Labor Relations Board*, *supra*, the court applied this rule to a case such as the one at bar, stating in part, as follows (p. 114):

“The evidence that the Company welcomed the organization of an independent union of its employees and preferred such a union to any other, and made haste to recognize the Association as the sole bargaining representative for all of its employees, is not a sufficient factual basis for the finding of interference, domination and support. This for the reason that, while such evidence is consistent with the hypothesis that the formation and administration of the independent union was interfered with, dom-



inated and supported by the Company, it is not inconsistent with the contrary hypothesis, and therefore supports neither.”

#### ACTIVITIES OF LEADMEN.

Petitioner in its brief does not purport to demonstrate, but merely infers, that the actions of leadmen in the solicitation of membership in the Association and the collection of dues for the Association were of such a character that employees might conclude therefrom that they reflected the attitude of the company and thus influenced the employees with respect to their union affiliation. In order to demonstrate that the acts and statements of leadmen were not coercive in character or such as to indicate that they were reflecting a desire on the part of management, it is necessary to examine in some detail what actually occurred.

#### LEADWOMAN GOEBEL.

We will first examine the activities of leadwoman Goebel, inasmuch as the Board in its order places special emphasis upon her activities. Goebel was leadwoman on the burr bench during the second shift. It was to this department that most new employees in the machine shop were first assigned, and the only specific instances of solicitation of membership or attendance at the Association meetings by leadmen shown by the record concerned her activities.

The Board called five former employees of respondent as witnesses of Mrs. Goebel's activities. None of these witnesses testified to any threats made by Mrs. Goebel of loss of work or discrimination if an employee joined the



I. A. M. or failed to join the Association. None of them testified as to any inducement being offered to join the Association or not to join the I. A. M. None of them testified to any statement made by Mrs. Goebel, which purported to show a preference of the company for the Association or hostility on the part of the company towards the Union. One of the employees did not join either the E. M. A. or the I. A. M., or attend the meetings of either organization. The other four, prior to any activity on the part of the Union, joined the Association at the solicitation of Mrs. Goebel, but all of them abandoned the Association and either joined the I. A. M. or designated it as their bargaining agent shortly after the Union had offered itself to the employees as a candidate.<sup>23</sup>

The testimony of these five witnesses is briefly summed up as follows:

*Anna Cox.*

Anna Cox testified that about the 15th of February, 1943, Mrs. Goebel told her, "We have a union of our own. If you want to join, go to the tool crib and pay your dues" [R. 223-224]; that on February 22d she was approached in the plant by a male employee, who wore an A. F. of L. button, and asked to join the A. F. of L.; that she did not join or designate either one [R. 224-225].<sup>24</sup>

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<sup>23</sup>The evidence shows that the I. A. M. activities commenced on January 10th, and were concluded sometime about the first of March, 1943 [R. 307, 309, 429].

<sup>24</sup>Anna Cox, as well as the balance of the five employees above mentioned, were all members of a shift which was laid off on February 22d because, as the Trial Examiner found, of lack of work.

*Mary Elsenius.*

This witness testified that in November of 1942 [R. 227], she joined the Association as result of a conversation with Mrs. Goebel, in which Mrs. Goebel said that all employees were expected to join, and in reply to a question as to whether or not joining was compulsory was told to "Go to the crib and sign up with Mr. Bucknell" [R. 228].<sup>25</sup> She also testified that she attended but one meeting of the Association and that she attended it because Mrs. Goebel told her that all were expected to go [R. 229];<sup>26</sup> that she ceased to pay dues to the Association after December, 1942, and designated the A. F. of L. as her bargaining agent [R. 228, 230, 232-233].

It is evident that while this witness strove to give the impression that she believed membership in the Association and attendance at its meetings was compulsory, her acts showed that she did not think there was any compulsion whatsoever, for she ceased to attend its meetings, ceased to pay dues to it, and designated the A. F. of L. as her bargaining agent. Certainly this does not show that this employee felt any coercion or compulsion, but on the contrary felt she had entire freedom in the choosing of a bargaining agent.

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<sup>25</sup>Bucknell was employed as tool room attendant, and it has never been contended that he was a leadman or acted in any supervisory capacity.

<sup>26</sup>The evidence shows there was no master switch to turn out the lights over the burr bench, and this was verified through inspection by the Trial Examiner. Other witnesses testified that each employee turned out her own lights [R. 253, 254, 258, 301].

*Alice Taylor.*

This witness testified she joined the A. F. of L. in November, 1942, shortly after going to work for respondent, as result of a conversation with Mrs. Goebel, in which Mrs. Goebel told her about the Association, asked if she had joined, and then told her, "You can go to the tool crib and join and pay the dues to Buck;" that she only paid dues for November and December [R. 234]; that due to the way in which Mrs. Goebel approached her she thought membership in the E. M. A. was compulsory, but later learned that it was not, and that she could work whether or not she belonged to the Association [R. 241]; that she transferred her membership in the A. F. of L. to the I. A. M. local, which was seeking to organize Gilfillan's employees, on January 11th and then received a union button, but she did not wear it although she had no reason for not wearing it [R. 236]; that she attended but one meeting of the Association, that of January 4, 1943, and that she attended it because Mrs. Goebel told her to go to the meeting [R. 236-237]; that when she first paid her dues she was told that the E. M. A. was an employees' union, "just a union of the employees."

*Ella Richardson.*

This witness testified that she joined the E. M. A. in November of 1942, during the first week of her employment, as result of a conversation with Mrs. Goebel, wherein Mrs. Goebel asked if the witness had joined the E. M. A., and then said that the witness "should see about it. and to go up to the tool crib and see Buck, that he would take my application and give me my card" [R. 259]; that she did pay dues for December and January; that

she attended meetings of the E. M. A. in December, January and February.

Contrary to the testimony by which Elsenius and Taylor sought to show that employees were led to believe that attendance at the January E. M. A. meeting was compulsory and that the plant was shut down, this witness testified that they attended the meeting because, when the notice of the meeting was posted, they found they were going to have a discussion about the contract with the company, and they decided to go to the meeting, in order to learn about it and that each individual shut off the power on his or her own machine [R. 252-253]. She further testified that there was a greater attendance at the December meeting of the Association than at either of the others, and that there was about a quarter as many people at the January meeting as at the December, and fewer at the February meeting than the January [R. 254-256].

She testified that she applied for membership in the I. A. M. on February 6, 1943, at which time she received a Union button, which she wore in the shop, and that no one questioned her about the button or her Union affiliation [R. 249-250]; that she did have a conversation with Roy Johnson, President of the E. M. A., in which she asked him if he objected to the Union button she was wearing, and that he replied in the negative; that they argued about the relative merits of the A. F. of L. and the E. M. A., but that she understood he was talking for his organization and as President of it [R. 254-258]; she further testified that the employees who did not attend the Association meetings remained at work in the plant [R. 258].

*Myrtice De Shazo.*

This witness joined the Association shortly after her employment by respondent on November 24, 1942 [R. 451]. She testified to the following circumstances surrounding her joining: that there was a notice of a meeting of the E. M. A. posted, that she asked Mrs. Goebel what the E. M. A. was, was told that it was a company association for the employees, and suggested that the witness talk to Buck at the tool crib; that she did talk to Buck and paid her dues for one month; that on February 15, 1943, she had a conversation with Marjory Goebel on the subject of the E. M. A. as follows: "She asked me if I was paid up in my E. M. A. dues. I told her I hadn't, and I wasn't going to pay any more. She said I had no reason to object, the only meeting I had been to I won a bond, and that was enough to pay my dues for a year" [R. 455]; that she attended but one meeting of the E. M. A., at which time she had a conversation with Marjory Goebel as follows: "I asked her if we were going to be docked for the time we were over there, and she said she wasn't sure, she didn't know, but supposed that we would be."<sup>27</sup> "I asked her before we started over there if we had to attend, and she said yes" [R. 458]. She further testified, however, that there were only about 150 present at the meeting; and that although she knew there were over 300 operational employees in the plant it didn't strike her as strange that all not in attendance were disobeying orders [R. 462-463]. She further testified that she didn't even think as to whether or not it

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<sup>27</sup>The evidence shows without conflict that all employees were docked for time spent at Association meetings.



was an Association rule or a Company rule that compelled attendance at the Association meeting [R. 463-465].

Mrs. Goebel denied that she had ever told any of the women that they had to attend Association meetings or said anything more than it was time to go to the meeting [R. 301]. She also denied that she turned out the lights over the benches, and further testified that the lights were left on and those who did not attend the meeting continued with their work [R. 302-303].<sup>28</sup> She further testified that she never checked up to see if those whom she asked to join the E. M. A. had or had not joined [R. 303]; that she did not hold any office in the E. M. A., but that she did talk to the girls about membership in the Association, and it would be just after they had been employed for a while that she “just told them if they wanted to join the E. M. A. \* \* \* to go around and talk to Buck \* \* \* and he would explain it to them” [R. 292]; that she never requested any of the girls to go with her to the meetings of the E. M. A. [R. 293].

Giving full credit to the testimony of the five witnesses called as to the activities of Mrs. Goebel, there is nothing in their evidence to establish any fact from which it could reasonably be inferred that respondent was attempting through her to influence or coerce its employees, or from which it could be inferred that employees believed that she was expressing the views and desires of management.

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<sup>28</sup>We direct the court's attention to the fact that none of the witnesses who testified as to the activities of Mrs. Goebel, with the exception of Miss Richardson, ever attended more than one meeting of the Association, and none of them testified that the lights were turned off or the power shut off during the meetings which they did not attend.



rather than acting for and on behalf of the union of her choice. While certain of the witnesses attempted to show that they felt that membership in the E. M. A. and attendance at its meetings was compulsory, the facts to which they testified belie their statements. All of those who sought to give this impression abandoned the E. M. A. shortly after joining it, ceased to pay dues to it, or attend its meetings, and openly espoused the cause of the I. A. M. Certainly this evidence not only fails to show compulsion or coercion or influence, but on the contrary, shows that these employees openly and freely exercised their right to choose their bargaining agent and made their choice contrary to what would have been the wishes of management if those wishes had been expressed by the solicitation of Mrs. Goebel.

Certainly, in view of respondent's complete neutrality and the open solicitation of members in the plant by the Union, it is equally consistent to infer that Mrs. Goebel's actions expressed merely her own ideas and her support of the union of her choice as to infer that she acted for and expressed the views of management.

To hold that an employee having some slight supervisory duties, such as those of Mrs. Goebel, could not solicit and work for the union of her choice, would be to deny to such employees the rights of the statute (National Labor Relations Act) which was enacted for their benefit (*N. L. R. B. v. Tex-O-Kan Flour Mills Co.* (C. C. A. 5), 122 F. (2d) 433, 438).

LORETA SCHWERTFEGER.

The Trial Examiner found that Loreta Schwertfeger acted in the capacity of a leadwoman. The record, however, establishes that her duties were those of an instructor in the Inspection Department, who also did inspection work along with other employees in that department. She testified that she had never been told she was a leadwoman, had never been paid as such, and had never told anyone else that she was one [R. 479]. She was not classified upon respondent's records as a leadwoman [R. 39].

Miss Schwertfeger and other inspectors worked in a relatively small room under the direct supervision of a foreman [R. 484]. She testified that she collected some dues for the Association in January, 1943; that some of the girls in the department asked her what the E. M. A. was, and she told them it was a union, that they would have to talk to the President of the union to find out what it was about [R. 479]; but none of them asked her what kind of union it was; that she went to some E. M. A. meetings; most of the other girls on her shift were members of the E. M. A. and went along; that none of them ever asked if they had to go to the meetings [R. 480]; that some of her collecting of dues was done during working hours and some during rest periods.

There was no evidence of any act on her part other than the mere solicitation of membership and collection of dues. Certainly there is nothing in this testimony from which it can be inferred that Miss Schwertfeger acted in anywise than as a member of the union of her own choice or from which it can be inferred that through

her respondent, in spite of its neutral and impartial attitude, was covertly seeking to influence its employees in their choice of a bargaining agent or to interfere with them in the exercise of the rights granted by Section 7 of the Act, nor is there anything to show that any employee looked upon, or had reason to look upon, Miss Schwertfeger as acting for respondent in soliciting membership in the Association. She made no statements that pretended to reflect the attitude of respondent or that were in anywise coercive in character, and did nothing that any employee, a member of the Association, might not do in furtherance of its interests.

#### ROY JOHNSON.

Roy Johnson was elected President of the Association in the spring of 1942, and remained President of that Association during the period of the Union's activities at respondent's plant. The Trial Examiner found him to be a leadman. The evidence as to the capacity in which he served respondent during the time he was President is clear and uncontradicted. The evidence shows that prior to July, 1942, Johnson had been an operator on the milling machines; that in that month respondent was unable to procure a competent leadman on those machines and Johnson, who was then President of the Association, was advanced to leadman with the undersanding that the position was temporary and that he would revert back to an operator when a competent leadman could be found; that after Johnson was made a temporary leadman and prior to the last of January, 1943, two different men were employed as leadmen on the mills and Johnson put back to work as an operator; finally a competent leadman was

found the last of January (this was at the height of the I. A. M. organizational drive) and Johnson for the third time in the period became an ordinary operator. Johnson did not draw pay as a leadman and was not classified as such [R. 532, 539, 544, 545, 569].

We submit that there is nothing in these facts from which any employee could have inferred that a man who was put up and down in his department without any change in his rate of pay was the favorite of management or authorized by management to speak for it. Nor is there anything in these facts from which it could be inferred that management was seeking to show its preference for the Association as a bargaining agent, through making its President a temporary leadman (without a leadman's pay), and this is particularly true in view of the fact that he was finally demoted from his temporary position at the very height of the organizational drive conducted by the I. A. M.

If respondent had insisted that the Association remove Johnson as its President in order that it might proceed with its production of war materials through using his services temporarily as a leadman, a charge that respondent had interfered with the Association would have been well founded.

#### LEADMAN CLARK.

The only activity on the part of this leadman shown by the record is the testimony of the witness Hines, that after a meeting of the E. M. A. had been announced by a bulletin, leadman Clark said, "The meeting is being held over at the hall" [R. 210-212].

SUPERINTENDENT CRAMER.

Cramer was Superintendent of respondent's machine shop and had the power to hire and fire employees. George Nelson, a former employee of respondent, testified that on the day of the E. M. A. meeting in January, 1943, he asked Cramer if it was necessary to knock off work to go to the meeting, and that Cramer replied, "Personally, as an official of the company, I can't say anything \* \* \* They should all attend to it"; he said they could go over there in a body and they might get a raise out of it and keep some other union from coming in on them [R. 145].

Cramer denied that he had ever said the employees should go over in a body or that they might get a raise out of going, but admitted that he had said that while he couldn't say anything as an official of the company, he thought that they should go over to the meeting, and that on various occasions, in response to questions from employees as to whether they should go to meetings, he had advised them that in his capacity as Shop Superintendent he could not give them any advice, but that personally he thought "if they expected to get any benefit from any association, they should forfeit something to it", and that therefore he thought they should go, but that he told them that they did not have to go [R. 590-591; 596-597].

In considering the testimony of Nelson and Cramer, it must be remembered that the meetings which were under discussion were meetings for the members of the Association, not meetings which the employees generally



were entitled to attend, and that the uncontradicted evidence shows that at the meeting as to which the testimony of Nelson refers there was a very poor attendance [R. 254]. In view of these facts we think that Cramer's version of the incident must be accepted, for if Nelson's statement is true, that Cramer had in effect ordered the employees to go to the meeting, it would certainly be strange that less employees attended it than attended the prior meetings when no orders were given. Whether or not Cramer's version or Nelson's version can be accepted, it is clear that no employee could have understood that Mr. Cramer was attempting to speak for respondent or to reflect its views or attitude, because under the testimony of both witnesses Cramer made it clear that he was only expressing his individual opinion as to whether members of the Association should attend the meetings. Cramer's statement, even if we accept Nelson's version of it, was not coercive. It could not have been addressed to persons who had not already made their choice of a bargaining agent, for the meeting which was to be held was not a meeting for the employees generally, but was a meeting of members of the Association who had already made their choice of a bargaining agent.

We do not understand that there is anything in the Act which deprives a Superintendent of a plant from expressing an individual opinion as to whether or not employees should attend the meeting of an Association of which they were members, so long as their statements are



not coercive in character. To deny them this right would be to deny their constitutional right of free speech.

*N. L. R. B. v. Virginia Electric & Power Co.*, 314  
U. S. 469, 62 S. Ct. 344;

*N. L. R. B. v. Union Pacific Stages* (C. C. A. 9),  
99 F. (2d) 153, 178;

*Jefferson Electric Co. v. N. L. R. B.* (C. C. A. 7),  
102 F. (2d) 949, 956;

*N. L. R. B. v. Hollywood Maxwell Co.* (C. C. A.  
9), 126 F. (2d) 815, 823;

*Midland Steel Products v. N. L. R. B.* (C. C. A.  
6), 113 F. (2d) 800, 804;

*N. L. R. B. v. Citizen-News Co.* (C. C. A. 9), 134  
F. (2d) 962, 963-965;

*N. L. R. B. v. Sunshine Mining Co.* (C. C. A. 9),  
110 F. (2d) 780, 786 .

#### OTHER ACTIVITIES OF LEADMEN.

Petitioner points to certain other activities of leadmen as evidence of respondent's interference with or domination of the Association.

Petitioner points out that leadman Clark was elected to the Association's grievance committee and accepted the nomination in January of 1943. It neglects, however, to mention that Clark did not act on the committee [R. 395].<sup>29</sup>

Petitioner asserts that leadman Bleuel served on the committee which negotiated and signed the Association's

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<sup>29</sup>It was the grievance committee that acted for the union in the negotiation of the 1943 contract, and Clark is not one of the persons who executed that instrument for the Association [R. 440].

1943 contract. This is a misconception of the evidence. Leadman Bleuel was a member of the committee, but there is no evidence in the record that Bleuel was a leadman at the time he acted as a member of the negotiating committee. The contract was signed at some date between the 5th and 10th of May, 1943, and Bleuel was then an operator upon a turret lathe.

Petitioner relies on the testimony of Albert Walters [R. 115] to show that Bleuel was a leadman at the time of the execution of the contract. The record does not support this. Walters was testifying as of the time of the trial.

Leadman Scheid served as a committee of one to arrange on behalf of the Association for the installation of new vending machines in the plant after the vending machines which had theretofore been in the plant had been destroyed by the fire in 1940. These activities on Scheid's part took place in June or July of 1941 [R. 602]. He was selected by the Association to negotiate with the owners of vending machines, to place machines for dispensing soft drinks, candies and cigarettes in the plant, and to pay the Association a commission on the sales made through the machines. There is no evidence that respondent had any part in his selection, or that it knew of his selection until after his negotiations with the vendors were completed, when he made arrangements for commissions to be paid to the Association through the respondent [R. 604]. The evidence further shows that Scheid was made a foreman on the swing shift in February of 1943, and that after his appointment as foreman he ceased to be a member of the Association [R. 606].

Petitioner argues that because respondent, at the request of the Labor Board, in May of 1941, posted a letter which stated that it would instruct its foreman and leadman not to accept places on committees of labor organizations having members in the employ of Gilfillan Bros., Inc., it had held out its leadmen as the representatives of management, and that therefore any activity on their part must be attributable to management.

This reasoning seems to us to be far-fetched and fallacious. There is no dispute but that respondent did, by and through its letter, instruct its leadmen not to accept places on committees of labor organizations. But it is also undisputed that the leadmen were members of the E. M. A., and as such entitled to hold office therein. If the employees who were members of the Association were to have the unfettered discretion in bargaining with management which is granted to them by Section 7 of the Act, then they had the right, irrespective of any directions of management or of the Board, to pick such of their members as officers or committeemen either in dealing with management or in conducting the internal affairs of the Association as they saw fit.

There is no evidence that respondent took any part in or suggested the election of Clark to the grievance committee—the evidence is that he did not act as a member of that committee—or of Scheid as a one-man committee to negotiate on behalf of the Association with third persons who were owners of vending machines, or with the selection of Johnson as President of the Association. The evidence does show that the letter [Respondent's Ex. 10, R. 366] instructing leadmen not to take office in or act on

committees of the Association was posted, and for a long period remained posted, on respondent's bulletin board, so that it must be inferred that its contents were known to the employees generally.

The only remedial action that respondent could have taken when the Association, of its own volition and despite the terms of the letter of 1941, appointed leadmen to speak and act for it, would have been to force the union to elect other officers or committeemen or to demote the leadmen appointed. By such action respondent would have directly interfered with the administration of the Association and dominated it in the consummation of the very purpose for which it was formed, that of bargaining with respondent.

The acts of the employees in selecting in open meeting leadmen to act for them on committees or as officers demonstrates not that the Association was sponsored or controlled or interfered with by management, but that the employees were asserting their right to choose whom they pleased from among their members to speak and act for them, despite the expressed will of management to the contrary.

Leadmen, as members of the Association, had the right to participate in its affairs, and respondent could no more destroy that right than it could, through the actions of leadmen, destroy the rights of its employees to be free in their selection of a bargaining agent. If respondent could dictate to the Association so as to prevent a leadman from acting as one of its officers or taking part in the internal affairs of the Association (such as entering into business contracts with persons other than respondent), it

could to a large extent control and dominate the Association. The respondent could thus rid itself of the necessity of dealing with an employee who was objectionable to it because too insistent upon the rights of the Association and its members, by in effect bribing such employee to abandon his uncompensated office in the union through offering him promotion to the position of leadman at an increase in pay. (The evidence shows that leadmen were paid from 10¢ to 15¢ an hour more than other operators.)

If respondent had sought to take the remedial action which the Board says it should have taken, it would have violated the Act and deprived its employees of the rights granted them by the Act.

*N. L. R. B. v. Hollywood Maxwell Co.* (C. C. A. 9), 126 F. (2d) 815, 823-824;

*Magnolia Petroleum Co. v. N. L. R. B.* (C. C. A. 5), 112 F. (2d) 545, 552;

*N. L. R. B. v. Arma Corporation* (C. C. A. 2), 122 F. (2d) 153, 156;

*N. L. R. B. v. Tex-O-Kan Flour Mills* (C. C. A. 5), 122 F. (2d) 433.

In *N. L. R. B. v. Arma Corporation*, *supra*, the Board, because of the activities of leadmen, had found that an independent union was company-dominated. In holding that the activities of the leadmen, members of a union, were not substantial evidence to uphold the finding of the Board, Judge Hand of the Second Circuit said, in part:

“If such employees were not to be free to express their opinions and to urge fellow-workmen to organize in a certain way, the interest and activity of



the most competent men in the appropriate bargaining group would be eliminated. \* \* \* There was no evidence that the officers or supervisory employees consented that key men should represent the views of the corporation, or gave the other workmen reason to suppose that the key men worked for Independent in order to please Arma. *If the latter had interfered with the labor activities of the key men, except to prevent canvassing during working hours, it surely would have been guilty of an unfair labor practice and would have deprived these men of rights guaranteed under Section 7 of the National Labor Relations Act."*

#### NEGOTIATION OF THE 1943 CONTRACT.

Petitioner asserts that the fact that respondent in May of 1943 negotiated a contract with the certified bargaining agent of its employees, the Association, and the circumstances surrounding the negotiation of that contract, constitute proof that the Association was dominated or controlled by respondent.

Let us examine the facts. In 1937, after an election held under the auspices of the Board, the Association was certified as the collective bargaining agent for respondent's employees. It thereafter each year entered into contracts with the Association. There is no evidence that these contracts were not negotiated at arm's length. Between 1937 and 1943, no other labor organization had attempted to organize respondent's employees or had asserted that it represented a majority thereof. In April, 1942, respondent entered into a contract with the Association which by its terms expired on the 30th of April,



1943 [R. 582-585]. By the terms of Section 4 of this contract it was provided that "because of changing economic conditions it was understood that negotiations for changes in wages may be reopened by either party at any time." Prior to March, 1943, the parties had commenced negotiations for the revamping of the wage scale of the employees and changes in other terms of the contract [R. 565-566].

On February 27, 1943, the Union filed a petition under Section 9 of the Act [R. 216-217]. Respondent and Association were notified by letter on that date of the filing of this petition [R. 617], and a copy was sent to each. On about March 6th, a committee, including the officers of the Association, waited upon respondent's President, Mr. S. W. Gilfillan, who had been absent from the state, relative to negotiations for a contract for the coming year [R. 317-319, 566, 581] between the Association and the Company. At this meeting the notice which had been received from the Board relative to the petition of the I. A. M. to be certified as the bargaining agent of Gilfillan's employees was discussed, and Mr. Gilfillan stated that *if there was going to be an election* he didn't want to enter into any contract until he knew whether or not the Association or the A. F. of L. represented the employees, and that he wasn't going to deal with either, until he knew who had won the election [R. 526]. Johnson then told Gilfillan he would let him know in a few days how many members the Association had, as the National Labor Relations Board had requested a list of the members of the E. M. A. Sometime later Johnson did advise Gilfillan of the number of members claimed by the E. M. A.

On March 8th, a few days after the meeting between the Committee and Mr. Gilfillan, the Union dismissed its petition under Section 9 of the Act and filed charges of unfair labor practices [R. 1, 217]. An amended charge was filed on May 5th, and on May 22nd the complaint was issued and served upon the respondent.

When the meeting between the Association's committee and respondent's President was held early in March, the I. A. M. was claiming that it represented a majority of respondent's employees.<sup>30</sup>

When, however, the petition for determination of representation was dismissed, the situation was entirely changed. The Board had certified the E. M. A. as the bargaining agent for respondent's employees. This agent respondent was bound to recognize until some other was certified, or proof had been made to respondent that some labor organization other than the E. M. A. represented a majority of its employees. Until one of these things occurred respondent was entitled to assume that a majority of its employees, even though they were members of neither labor organization, desired no change in their bargaining agent (*Valley Mold & Iron Corp. v. N. L. R. B.* (C. C. A. 7), 116 F. (2d) 760, 764-765). The I. A. M. had withdrawn its petition which would have enabled the Board to determine whether or not the respondent's employees desired the I. A. M. or the E. M. A. as its bar-

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<sup>30</sup>It is apparent that this claim was not made in good faith, for as of that date it had authorization cards or membership applications from but 131 of respondent's employees [Respondent's Ex 27, R. 622], and had demanded that certification proceedings be instituted by the Board. Therefore, Gilfillan's statement, if there was going to be an election he would not enter into a contract until he knew which union had won the election, was not only common sense, but a statement of what the Act required.

gaining agent, and had not offered to respondent any proof that it represented a majority of the respondent's employees.<sup>31</sup> Respondent was, therefore, in the position of either continuing to deal with the E. M. A., the certified bargaining agent, or refusing to deal with it, thus subjecting itself to the charge of unfair labor practices in the event that the charges of unfair labor practices made by the Union were either not prosecuted or were found to be unwarranted.

An employer certainly is not bound to refuse to continue to deal with a certified bargaining agent every time some other labor organization makes an unsupported claim to represent a majority of its employees, nor does he continue to deal at the risk of having his act offered as evidence of interference with and domination over the certified union with which he deals. (Cf.: *N. L. R. B. v. Hollywood Maxwell Co.* (C. C. A. 9), 126 F. (2d) 815, 823; *N. L. R. B. v. Sun Shipbuilding & Drydock Co.* (C. C. A. 3, 135 F. (2d) 15, 19.) Yet that is the position of the Board in this case.<sup>32</sup>

The E. M. A. having once been certified by the Board as the bargaining agent for respondent's employees, the question as to whether or not a majority of its employees remained *members* of the E. M. A. was of no moment. The only question which could affect respondent's duty to deal

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<sup>31</sup>The reason for this is evident, as it then represented but 131 out of more than 500 employees [R. 622].

<sup>32</sup>This matter has been pending for eighteen months. If the Board's position is correct, then the employees would have been without a bargaining agent and respondent could have entered into no collective contract with its employees during this entire period.

with that Association was, had a majority of its employees chosen a different bargaining agent. The Act required the respondent to deal with the certified bargaining agent of its employees. This was a continuing duty, from which respondent could only be relieved by proof that the majority of its employees had chosen another bargaining agent or by the certification of a new bargaining agent.

Petitioner claims that respondent entered into the contract of 1943 (it should be remembered that this contract was not entered into until May, while the conference with the employees at which Mr. Gilfillan made the statements upon which the Board relies was held early in March) without any evidence that a majority of its employees were members of the Association. This claim is not borne out by the record.

Johnson testified that he told Mr. Gilfillan at the meeting in March that the Board had requested the names of members of the E. M. A. and that this was being prepared, and that in a few days he would let Mr. Gilfillan know how many members the E. M. A. had [R. 567]. The record further shows that Johnson did submit a list of the E. M. A. members to the Board's investigator, Mr. Ogran, which showed that the E. M. A. had 294 members. We believe that it must be inferred that this is the number of which he advised Mr. Gilfillan.<sup>33</sup>

The Board in its brief lays particular emphasis on the fact that respondent negotiated a contract with the Association for the year 1943 as proof to uphold its finding

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<sup>33</sup>294 was more than a majority of respondent's employees [R. 167, Pet. Br. p. 14].

that the E. M. A. was a Company-dominated union. ~~This fact, however, cannot support the finding, for if the E. M. A. was a legal union,<sup>34</sup> then respondent was bound to deal with it until some other organization in fact represented a majority of its employees.~~ This fact, however, does not render support to the Board's finding, for if the E. M. A. was a legal union, then respondent was bound to deal with it until some other organization in fact represented a majority of its employees. If the E. M. A. was an illegal union, then that fact might affect the enforceability of respondent's contract with it, but the contract would not render an otherwise legal union illegal. The evidence showing without conflict that the Union did not represent a majority of respondent's employees, and there being no proof that a majority of the employees no longer desired the E. M. A. as their bargaining agent, how can proof that respondent contracted with it be proof that respondent dominated it and that it is, therefore, an illegal union?

#### OTHER ALLEGED ACTS OF RESPONDENT.

In a statement prepared by an investigator for the Board and signed by one of respondent's employees, Oswald Lundberg, Lundberg stated that during the period that Thorstenson was Chairman of the E. M. A. (this date is not fixed, except that the context of the statement shows it to be prior to the fire in 1940) the E. M. A. was comparatively inactive, that its activities revived in March, 1941, when "either the C. I. O. or the A. F. of L. were distributing pamphlets in the plant at the time" [R. 371].

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<sup>34</sup>By "legal union" we mean one not subject to disestablishment because of unfair labor practices on the part of respondent.



The witness, Morton Pfleger, testified that there was not a great deal of activity on the part of the E. M. A. in 1937 [R. 275]. From this evidence petitioner infers that the E. M. A. only became active when other unions were active, and upon this inference bases the further inference that this activity of the E. M. A. was inspired by respondent.

Irrespective of the fact that a fact cannot be proved by basing an inference upon an inference, we do not believe that the second inference can be drawn from the evidence. The evidence shows no act on the part of respondent or any of its officers, superintendents or foremen inciting any activities on the part of the E. M. A., or any act or deed against outside unions. The evidence shows that each year the E. M. A. negotiated a new contract with respondent [R. 8, 14]; that it held monthly meetings; that it made demands for and negotiated new wage scales and increases in wage rates [R. 409-411, 413, 430-431, 432-442, 445, 446, 447, 565, 568, 582-586]; that in 1942, when there was no outside union activity at the plant, its members were attempting to influence other employees to join their organization. In fact, the activity of members of the E. M. A. in 1942 is one of the facts upon which the Board relies to substantiate its findings.

The evidence shows that there was at no time any labor disputes between respondent and its employees, and fails to show that the employees were in anywise dissatisfied with their working conditions, pay, or with the contracts between their bargaining agent and respondent. It is, therefore, not strange that membership in the Association, which was the bargaining agent, fell off during the periods



when that Association had no competition or opposition and the employees were making no demands on respondent. Nor is it strange that the members of the E. M. A. should be more zealous in protecting the status of that Association, as bargaining agent, when the interest of the employees in the choice of a bargaining agent was stimulated by the activities of a competing union. The situation is comparable to a school football team. There are never many candidates for one that has no games scheduled and must scrimmage against itself.

The respondent, having shown no hostility towards either union or any choice between the unions, how can the activities of one against the competition of the other be said to have been incited by management?

Petitioner further claims that the "comparative inactivity" of the E. M. A. during certain periods shows that it was not "a truly independent labor organization whose purpose is to represent the employees for the betterment of their wages and working conditions" (Br. p. 12).

Conceding for the purposes of argument that the evidence shows "comparative inactivity" on the part of the Association in the periods mentioned, there is no evidence to show that this was because of any interference on the part of respondent or that it was due to anything else than that the employees were satisfied with the E. M. A. as their bargaining agent, and that there were no matters in the relationship between respondent and the employees with which the employees were dissatisfied.

But in any event the efficacy of the Association as a bargaining agent is no affair of the Board. The Act does

not require employees to adopt a militant attitude in the exercise of their guaranteed rights, nor has the Board the right to determine whether the employees have been reckless in their choice of a bargaining agent or test the "practical effectiveness of that bargaining agent." (*E. I. DuPont de Nemours v. N. L. R. B.* (C. C. A. 4), 116 F. (2d) 388, 399; *N. L. R. B. v. Mathieson Alkali Works* (C. C. A. 4), 114 F. (2d) 796, 802; *Humble Oil & Refining Co. v. N. L. R. B.* (C. C. A. 5), 113 F. (2d) 85, 88.)

In support of its point that the alleged inactivity of the Association constituted proof of company domination, petitioner (Br. p. 18, note 26) cites three cases. We have examined these cases with care, but in only one of them<sup>35</sup> is there any mention of the point, and then only by way of reference to the grounds upon which the Board, not the court, based its decision.

#### WAGE INCREASES.

Petitioner asserts that the wage increase given by respondent to its female employees, effective as of January 10, 1941, is substantial evidence that respondent was thereby seeking to weaken the attempts of the I. A. M. (whose activities at respondent's plant started on the 10th or 11th of January) to organize its employees. Petitioner but casually mentions the facts that the negotiation for this raise in wages had been started by the E. M. A. before there was any activity by the I. A. M., that the raise was not announced throughout the plant but was only brought to the attention of the persons receiving the increase by the increased amount of their next pay check

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<sup>35</sup>*Continental Box Co. v. N. L. R. B.*, 113 F. (2d) 93.

[R. 554-555, 557]<sup>36</sup> and that in December, 1942, an increase was also requested for the men in the hydraulic department [R. 576], but that this was not granted until about May, 1943 [R. 430]. Petitioner also overlooks the fact that at the time the raise for women employees was requested, a raise was also requested for other employees in the machine shop which was not granted [R. 430, 448].

This court will take judicial notice of the fact that in October of 1942 the War Labor Board, pursuant to the authority vested in it by the President, had made it unlawful for employers to pay wages beyond those fixed by wage scales in effect as of October 3, 1942. On November 24, 1942, the War Labor Board issued its General Order No. 16.<sup>37</sup> The effect of this order was to permit employers to equalize the wage or salary rates paid to women with rates paid to males for comparable quality and quantity of work. The evidence here shows without conflict that this order was first brought to respondent's attention by Roy Johnson in December, and in the latter part of December, or early part of January, and after the matter had been investigated by Mr. Sparks (respondent's vice-president) and it was found that the order was effective, respondent did give a raise to its women employees, but only in so far as it was necessary to adjust their wages with those of men [R. 564, 558]. From this evidence it cannot be inferred that respondent was seeking to influence its employees. The raise was one indicated by the War Labor Board's order, it had been requested by the E. M. A. late in December before the I. A. M. activities

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<sup>36</sup>This was true in all cases of raises given employees [R. 557].

<sup>37</sup>C. C. H. Labor Law Service, Vol. 1A, par. 11.516.

had started, and was granted within a reasonable time after requested. No publicity was then given to the raise, nor was any announcement made that the Company had joined with the E. M. A. in seeking an increase for the men in its hydraulic department.

Certainly if respondent had been seeking to influence its employees in their choice of a bargaining agent, it would not only have given publicity to the fact that it had raised its women, but would have publicized the fact that it had asked the War Labor Board for permission to increase the wages of the men in its hydraulic department, and instead of taking no action on the request for increases for men in the machine shop, would have filed an application with the War Labor Board for such an increase. Such action on its part would not have cost respondent a dime and would have appealed to the employees generally, not to the few women who received the benefit of the raise which was given. Evidence such as this does not amount to substantial evidence and could not raise even a suspicion that the respondent was attempting to influence its employees in the mind of anyone, except a Board acting in the cause not only as judge but as a party litigant and prosecutor.

If the Board's position is sustained, then no employer, no matter how impartial and neutral, may grant a raise in wages to a group of its employees while a union is seeking to have itself chosen as bargaining agent by the employees in place of another union, without being subject to a charge of unfair labor practices.

## HOURLY OF E. M. A. MEETINGS.

As further proof that respondent favored and interfered with the Association, petitioner points to the fact that the monthly meetings of the E. M. A. were held between 5:30 and 6:30 o'clock, and asserts that the plant was closed for work during this period.

We have heretofore pointed out that the respondent's plant was operating twenty-four hours of the day. If the Association was to have meetings which its members could attend, and the Association thus function, its meetings would have to be held during working hours. The day shift went off duty and the night shift came on duty at 6:00 P. M. The hours chosen by the E. M. A. for its meetings were therefore those which would least interfere with the productive efforts of its members.

The evidence does now show (as claimed by petitioner) that respondent closed its plant or shut down either the day or night shift during the period of the E. M. A. meetings. On the contrary, it shows that members of the Association were allowed, on their own time (it is admitted that they were docked for any time spent at the Association meetings), to attend the meetings of their union. But the evidence clearly shows that during the period of the meetings, those who did not desire to attend continued at their work [R. 258, 590-591].<sup>38</sup>

If respondent had refused to permit members of the Association to attend union meetings on their own time,

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<sup>38</sup>The meetings were not organizational ones, open to all employees (such as were held by the I. A. M. in January and February [R. 423-424, 429-430]), but business meetings for E. M. A. members only.



certainly it would have obstructed their free exercise of their right to maintain a union of their own choice. They had a right to meet as a body, to elect officers and committees, and to discuss the demands that were to be made through these officers and committeemen upon management. They had the right to have a voice in and to express their individual opinions upon their union's business; this they could do only through meetings. It may be true that affiliated unions in many cases make demands upon management, which demands are conceived and carried out solely by the paid officers of the union and without consultation with the members of the union. But that is not the spirit of Section 7 of the Act.

Throughout its brief petitioner asserts that respondent was attempting to influence its employees to attend meetings of the E. M. A. There is no evidence that these meetings were open to anyone other than the persons who were members of the Association. It would be a strange way for an employer to influence its employees in their choice of a bargaining agent to insist that they attend the meetings of one association and then dock them in their pay for so doing.

#### FINANCIAL SUPPORT.

There is no conflict in the evidence as to the facts upon which the Trial Examiner bases his finding of the ultimate fact, that the respondent "contributed support" to the Association [R. 43]. The evidence on this point falls into three separate parts: first, the contribution to an employees' picnic; second, vending machine revenues prior to 1941; and third, vending machine revenues after 1941.



#### CONTRIBUTION TO EMPLOYEES' PICNIC.

The evidence shows that in 1937, the year in which the Association was formed and was engaged in a contest with the C. I. O. for members, the Company gave a picnic for all of its employees and their families. The Association played no part in either sponsoring, financing or managing the picnic [R. 179].

In 1938 another picnic was held, to which all employees, irrespective of union affiliation, and their families were invited. This picnic was sponsored by the E. M. A., but it found that it was short of funds to pay the entire cost of the picnic, and the deficit was made up either by the Company or its President, Mr. S. W. Gilfillan [R. 182]. One of the officials of the Company induced firms from whom respondent purchased supplies to donate prizes at both picnics [R. 180, 181, 184, 185, 186].

#### VENDING MACHINE REVENUE PRIOR TO 1940.

At the time of and prior to the formation of the E. M. A., owners of machines vending candy, cigarettes and soft drinks had maintained in respondent's plant certain machines vending their merchandise. For that privilege they paid a percentage of the sales made through the machines. This percentage respondent did not accept for its own benefit, but gave to a charity. *After* the formation of the Association and its selection as bargaining agent, the E. M. A. asked that it receive the commissions on the sales made through the vending machines, and this right was granted them [R. 182-183]. Respondent's records of the amount of these commissions were destroyed in the fire of 1940, but Semple testified that the E. M. A. received about \$12.00 per month [R. 188].

## VENDING MACHINE REVENUE AFTER 1941.

The vending machines which were in the plant prior to November 30, 1940, were on that day destroyed by fire. When the plant was rebuilt, respondent did not have the machines replaced.

In the spring of 1941, the Association appointed one of its members to negotiate with vendors of soft drinks, cigarettes and candy to place machines in the plant and to pay the Association a commission. The member appointed made direct contact with the vendors and made arrangements as to payment of a commission to the Association [R. 602-603, 588]. After the arrangements were made and the machines installed, difficulties arose in the collection of the commissions by the Association, and the Association's committeeman directed the vendors to send the checks to the Company [R. 603-604, 589] and *then* contacted one of the Company's officials and asked him if he had any objection to the money being sent to the Company [R. 604]. The evidence shows that the respondent had nothing to do with the servicing of the machines or any ironing out of troubles when they were not functioning, but that this was taken care of by the Association [R. 604-605]. Thereafter respondent received the commissions from the vendors and entered each amount remitted in an account payable to the Association, and from time to time on demand of the Association paid the amount accumulated to the Association [R. 262-265]. From the date of the installation of the machines to the time of trial the amount of the commissions averaged less than \$15.00 per month.

The E. M. A. also maintained a milk vending box in the plant, but this was operated by it at a loss [R. 415]. The record does not show the aggregate loss sustained by the Association through the sale of milk, but does show that in December, 1942, there was a loss of \$7.00, and in January, 1943, a loss of \$8.60 [R. 396-397, 414]. None of the machines was marked so as to show that they were operated by the E. M. A., nor is there any evidence that the fact that the Association received the revenue from them was known to the employees other than the officers of the Association.

The payment by the respondent or its President of the deficit arising out of the picnic which was given for all employees in 1938 (nearly five years prior to the filing of the charges herein) if a contribution to the E. M. A., certainly in the absence of further like contributions, could not be held to so have infected the E. M. A. as to leave it permanently crippled and necessitate an order of disestablishment.

We submit, however, that this contribution was not a contribution to the E. M. A. The picnic was given for the benefit of all of the employees without distinction as to union membership, and each of them received equal benefit from the payment made by respondent. At the time of the 1938 picnic the E. M. A. had just been chosen by the majority of the employees as their bargaining agent and no other union was seeking to so represent them. The payment was therefore evidently not made in any attempt by respondent to show favoritism to one organization over another, or to interfere with the administration of the E. M. A., or to curry favor for it among the employees,

but on the contrary it was merely a friendly act, not towards the E. M. A., but towards all of the employees.<sup>39</sup>

There is no doubt that from a technical standpoint the contributions by respondent of the commissions which it received from the vending machines prior to the fire, and which amounted to approximately \$12.00 per month, constituted a financial contribution to the E. M. A. by respondent. That this contribution had no connection with the formation of the E. M. A. is apparent from the record, for as we have shown the contributions were not requested and did not commence until after the formation of that Association and its selection as the bargaining agent of the employees. If these contributions ever interfered with freedom of action on the part of the E. M. A. or in the choice by the employees of that association as their bargaining agent, that effect ceased to exist when the contributions ceased, nearly three years prior to the filing of the charges out of which this case arises.

That these contributions are not such as were contemplated by Congress in using the words "financial support" in the Act is evidenced by the *Senate Committee Report No. 573* of May 2, 1935, Seventy-fourth Congress, First Session, where the Committee said:

"It seems clear that an organization or a representative or agent *paid by the employer for representing employees* cannot command, even if deserving it, the full confidence of such employees. And free labor relations depend upon absolute confidence on the part of each side and of those who represent it."

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<sup>39</sup>Cf. *N. L. R. B. v. Algoma Plywood Co.*, 121 F. (2d) 602.

The E. M. A. had no paid officers or employees. Respondent had no part in its formation, and the evidence fails to show that it was anything other than an organization spontaneously formed by the employees to act as their bargaining agent. The evidence fails to show that respondent at the time of these contributions or at any time in anywise participated in the internal management or administration of the affairs of the E. M. A. or expressed any wish as to what position the Association should take upon any matter, or that it dealt with the Association other than at arm's length. There is no showing that these contributions in anywise resulted in any domination or interference with the administration of the E. M. A., and as they ceased nearly three years prior to the filing of the charges here, we cannot see that they can be a basis for an order to cease and desist, much less an order of disestablishment of the E. M. A. and the vitiation of respondent's contracts with it.

The Trial Examiner did not find, but very properly failed to find, that the act of respondent in acting as a collection agent for the E.M.A. under its contracts with owners of the vending machines constituted financial contributions from the respondent to the E.M.A., although he does find that by so acting the respondent acted as "fiscal agent" for the Association and thereby supported it [R. 41, 53]. It must be admitted that from a hyper-technical standpoint respondent was acting as a "fiscal agent" for the Association, for admittedly it did handle money which belonged to the Association. This, however, did not amount to support of the union, for the evidence does not show that respondent was called upon or did anything towards collecting amounts due to the



union, or auditing statements of the vendors, or that it did anything other than set up an account on its books to show the amount it had received from the vendors and for which it was therefore indebted to the Association. This support was no greater than if respondent had received the Association's mail and caused it to be distributed to the proper officers of the Association. Respondent had no control and exercised no function in connection with the amount of the commissions to be paid by vendors, or the payment by vendors of any amount which might be due from them to the Association, nor did it take any part in seeing that the machines were kept in operation.

The operation of vending machines and of the milk box were all a part of one operation by the Association. Can it be said that the fact that the Association operated one part of the venture at a loss and the other at a profit resulted in financial support to the Association by respondent? The whole transaction shows nothing but a friendly act on the part of respondent towards its employees, and it has been repeatedly held that such acts are not prohibited by the Act.

We have examined every decision by the Board and by the courts which we find cited and which involve the receipt by a union of financial support of the character shown by the record here. In none of them do we find a union ordered disestablished solely on the basis of this one fact, and the Board here consistently holds that this act alone is not sufficient to support its order.



Petitioner in its brief cites *Budd Mfg. Co. v. National Labor Relations Board* (C. C. A. 3), 138 F. (2d) 86 (Br. p. 17) in support of its position that the facts here support the Board's order of disestablishment of the Association. The facts of that case entirely distinguish it from the case at bar. In the cited case the association had been formed by the united efforts of the employer and the employees. The association had no dues and "could not have continued to exist had the Budd Company withdrawn its support." The petitioner for a time paid the officers of the association and after direct payment ceased permitted them to give as much of their time as was necessary to the business of the association without loss of pay. In the case at bar, as we have repeatedly shown, respondent had no part in the formation of the Association, nor did it attempt to interfere or influence its employees in the choice of a bargaining agent, and in the case at bar the officers of the Association were paid for any time given to its business by the Association [R. 398-399].

Assuming that respondent's contribution to the 1938 picnic and the receipt by the Association from the vendors of commissions from the sales of soft drinks, cigarettes and candy, constituted support of the Association, still the Board has found that this fact, standing alone, does not support its finding of Company domination of the Association and, therefore, does not support its order. We have heretofore shown that there is no evidence of any other interference by respondent in the affairs of the Association or in the choice by its employees of a bargaining agent, but that on the contrary the evidence shows en-

tire neutrality and impartiality on the part of respondent, without any discrimination against the Union. Therefore, if we assume that the evidence does sustain the finding of support, but does not sustain the other findings as to interference and domination, it must follow under the very terms of the Board's order that the probative facts found by and relied upon by the Board do not support the ultimate fact found by it, that the Association is Company dominated, and its findings therefore do not support its order that the Association be disestablished and respondent's contract with the Association vitiated.

### **The Order Is Too Broad in its Scope and Exceeds the Powers Granted the Board.**

We believe we have shown that the Board's order lacks substantial support in the record, that it is in violation of the Appropriation Acts, and that its petition for enforcement should be denied and its order set aside in its entirety.

If, however, this court should not agree with us, and should believe that the order as to disestablishment of the Association and the vitiation of respondent's contracts with the Association is supported by findings based upon substantial evidence, and does not contravene the Appropriation Acts, we think it must still find that the scope of the order exceeds the Board's power, in that, it orders respondent to cease and desist from dominating or interfering with the formation of any labor organization [R. 95], and to cease and desist from:

“(d) In any other manner interfering with, restraining, or coercing its employees in the exercise

of the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.” [R. 96.]

We have shown that there is no evidence whatsoever that respondent took any part in the formation of the Association, and that the finding that it violated Section 8(2) of the Act by so doing is wholly unwarranted. There is, therefore, no basis for an order that respondent cease and desist from such an act. If this order is permitted to stand and the Association should be completely disestablished, but the employees should, in the exercise of the rights granted them by the Act, again choose to form an independent union rather than affiliate with an outside union, and some leadmen should take a part in that activity, respondent would most likely be forced to try the question as to whether the leadmen’s activities were its activities on a contempt charge before this court, despite the fact that there is no evidence to support the charge that it has heretofore been guilty of such a charge. This would render the Act penal rather than remedial in its effect.

In the present proceeding respondent was not only charged with violating the rights granted to its employees under Section 7 of the Act by dominating and interfering with the Association in violation of Section 8(2), but was charged with violating those rights through discriminatory discharges in violation of Section 8(3) [R. 8],

and with interfering with the employees in the exercise of the rights granted to them by Section 7 by discriminating against the Union and threatening its employees with certain economic sanctions and the elimination of certain privileges [R. 9].

The Board has found that there is no substantial evidence to uphold the charges that respondent has been guilty of unfair labor practices within the meaning of either Section 8(3) or 8(1) of the Act, that is to say, it has held that there is no evidence to uphold the allegations of either paragraphs 8 and 9 of the complaint, which allege unfair labor practices within the meaning of Section 8(3) of the Act, or paragraphs 10 and 11 of the complaint, which allege unfair labor practices within the meaning of Section 8(1) of the Act. Yet by paragraph 1(d) of the order [R. 96], respondent is ordered to cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of the rights granted them under Section 7 of the Act, and this, of course, includes desisting from unfair labor practices within the meaning of Section 3 (discriminatory discharges) or unfair labor practices within the meaning of Section 8(1) of the Act, of neither of which acts has respondent been found guilty.

If this court should order enforcement of the Board's order as it now stands, and at a future date respondent should discharge a member of the complaining union, the Board could, and very likely would, hail respondent before this court on a charge of contempt. Other examples of the manner in which the order as it now stands could be used to try respondent for a contempt because of acts

wholly unrelated to the acts upon which the present order is based could be given without number, but we think that the one example we have given is sufficient to show that the present order contravenes the power of the Board as defined in *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 61 S. Ct. 693, and from a practical viewpoint would illegally restrain respondent in the free exercise of its right to choose whom it will employ, so long as it does not exercise this right to coerce its employees in the exercise of their rights under the Act. As we have pointed out, respondent has wholly converted its plant from the peacetime production of radios and refrigerators to the manufacture of war materials, and has increased the number of its employees from a maximum seasonal employment of 300 to a continuous employment of more than 500. When the time comes for reconversion of the plant, respondent will of necessity be forced to cut down its production forces, at least for a time. In cutting down its force respondent will have the right to choose to retain certain employees and discharge others, and to base its decision as to whom shall be retained and whom discharged on its judgment as to their capabilities and efficiency and to give effect to their length of service with respondent. It cannot properly or freely do this if it is to be faced with the threat of being charged with contempt of this court if it discharges a member of an affiliated union and retains an employee who is not a member of such a union.

### Conclusion

In conclusion we respectfully submit that the Board's order, in so far as it orders disestablishment of the Association and the vitiation of respondent's contracts with the Association, was made in violation of the Appropriation Act of 1944 and was beyond the power of the Board to make; and that the Board is without power to enforce that order under the Appropriation Act of 1945, and comes into this court with unclean hands in seeking the enforcement of its order; that the order of the Board is not supported by substantial evidence, and enforcement thereof should be refused and it should be set aside. But, if any part of the Board's order is supported by the evidence, the scope of the Board's order goes beyond the power of the Board, and therefore the scope should be limited by the decree of this court.

Respectfully submitted,

PAUL NOURSE,

*Attorney for Respondent.*









## APPENDIX A

*National Labor Relations Act* (Act of July 5, 1935, c. 372, 49 Stat. 452, 29 U. S. C., Sec. 157, *et seq.*):

“Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: \* \* \*

\* \* \* \* \*

Sec. 9(c). Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

## APPENDIX B

COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-40648

April 20, 1944

Chairman,

National Labor Relations Board.

My dear Mr. Millis:

There has been considered your letter of March 8, 1944, in which you refer to the so-called "rider" to the current appropriation for the National Labor Relations Board contained in the Labor-Federal Security Appropriation Act, 1944, approved July 12, 1943, Public Law 135, which provides:

"No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. *Provided*, That, hereafter notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested persons."

By decision of July 29, 1943, B-35803, it was held that the above-quoted provision limits the use of the Board's funds to those cases in which *charges* have been filed with the Board within three months of the execution of a labor agreement, but prescribes no limitation as to the time within which a *complaint* may be issued



by the Board. In decision of October 21, 1943, 23 Comp. Gen. 293, it was held that said appropriation is not available for use in connection with complaint cases involving violations of section 8 (2) of the National Labor Relations Act unless charges have been filed with the Board within three months from the execution of an existing agreement between management and labor.

You set forth various factual situations and the tentative conclusions reached by the Board concerning the application thereto of the above-quoted provision of law, and request decision of this office as to the correctness of those conclusions. The said cases and suggested conclusions will be considered and commented upon in the order presented in your letter.

“Case 1. Union A starts to organize the employees of the X Manufacturing Company with a view to becoming their bargaining representative under Section 9 (a) of the Act. The Company, not wishing to deal with Union A, calls in a business agent of Union B and signs a closed-shop agreement with that organization, although it knows that it represents only a small minority of its employees. Jones, an employee who has been active in promoting the cause of Union A, refuses to join Union B and 4 months later he is discharged. He files a charge on the next day.

“*Answer:* In the absence of the limitation in the Appropriations Act, the Board would have jurisdiction to hold his discharge a violation of Section 8 (3) since it discouraged membership in one labor organization and encouraged membership in another. Moreover, although the proviso to Section 8 (3) recognizes closed-shop agree-

ments, the agreement in this case would not be a defense since it was not made with a representative designated by the majority of the employees in the appropriate bargaining unit. Under the Appropriations Act, however, the Board would have no jurisdiction since the charge was not filed until after three months subsequent to the execution of the contract. It is true that the particular unfair labor practice of which Jones complained occurred just the day before the charge was filed, but to deem this a violation of the Act would necessitate passing upon the legality of the closed-shop contract.

“Case 2. Union A starts to organize the employees of the X Manufacturing Company with a view to becoming their bargaining representative under Section 9 (a) of the Act. The Company warns its employees not to join Union A, but invites Union B to send organizers into its plant, solicit for membership among its employees, and instructs its foremen to tell employees to join Union B. Union B obtains applications for membership from a majority of the employees and a closed-shop agreement is executed between this organization and the Company. Four months after the agreement is signed, Union A files a charge alleging that the Company has interfered with the right of its employees to self-organization and the right to engage in concerted activities. The charge does not mention the closed-shop agreement.

“*Answer:* In the absence of the limitation in the Appropriations Act, the Board would have jurisdiction to deem the Company in violation of Section 8 (1). Moreover, had the charge been broadened to include a violation

of Section 8 (3), the closed-shop agreement would not have been a defense, since it was executed with an 'assisted' organization. But it is our view, however, that the Appropriations Act would prohibit taking jurisdiction even on the basis of the 8 (1) charge since it indirectly places in issue the legality of the agreement with Union B to the same extent as would a charge alleging domination and support of Union B under Section 8 (2) of the Act. As the Comptroller General stated in his opinion of October 21, 1943, B-37051, 'it cannot be said that Congress intended to restrict its [the Appropriations Act's] application to those cases where the agreement is directly attacked; nor, as a matter of fact, does it appear that the Congress even considered the extent to which the validity of the agreement must be in issue in a complaint case.' The Board's customary remedy in cases such as the instant one is to direct the Company to cease recognizing Union B until it shall have been certified by the Board and to cease giving effect to the agreement with it.<sup>3</sup> The direct result of such an order is the abrogation of the existing agreement to the same extent as a disestablishment order in an 8 (2) case.

"Case 3 (a). In order to forestall the organizational efforts of Union A, X Manufacturing Company tells its foreman to persuade the employees to form an organization known as Union B to which it contributes money. It then recognizes Union B as the bargaining agent and signs a contract with it. Four months later Union A files a charge alleging a violation of Section 8 (2).

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<sup>3</sup>See, for example, *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72; *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685; *N. L. R. B. v. Fiss Corporation*, 136 F. (2d) 990 (C. C. A. 3).

*“Answer:* In the absence of the Appropriations Act, the Board on these facts would deem the actions of the company a violation of Section 8 (2). Upon this finding it would issue an order forbidding the company to recognize the dominated organization as the bargaining agent which would mean ceasing to give effect to the contract. Since such a proceeding, however, would necessarily abrogate the contract, the Board would regard this case as coming within the prohibition of the Appropriations Act. The opinion of the Comptroller General of October 21, 1943 (B-37051) is broad enough to cover all cases where the charge against a ‘dominated’ union is filed more than 3 months after an agreement is signed with such an organization.”

Since it appears that in the cases cited there was a failure to file charges within the three months’ period fixed by the provision of law involved, and that the assumption of jurisdiction by the Board necessarily would result in the abrogation of existing agreements, I concur in your view that the appropriation would not be available for use in connection with complaint cases of the nature indicated.

“Case 3 (b). In order to forestall the organizational efforts of Union A, X Manufacturing Company tells its foremen to persuade the employees to form an organization known as Union B to which it contributes money. It then recognizes Union B as the bargaining agent and signs a contract with it. A year elapses without any charge being filed. At the end of that time the contract, which by its express terms was of a year’s duration, expires. The Company signs another contract with Union

B. Within a month of its execution Union A files a charge alleging a violation of Section 8 (2).

*“Answer:* Under these circumstances the Board would have jurisdiction to find a violation of Section 8 (2), order disestablishment of Union B, and the abrogation of the new contract. It is submitted that the Appropriations Act does not operate as a bar. It is true that the period of limitations prevents any attack on the first contract but upon the expiration of the contract the Appropriations Act no longer bars a complaint directed at the nature of the labor organization. The second contract is not immune since the charge was filed within a month of its inception.

Since, in this case, it is clear from your factual statement that the second contract is a new agreement—separate and distinct from the original contract—and as the charges were filed within three months following its execution, it appears they timely were filed and, such being the case, complaint proceedings by the Board are not prohibited by the “rider” in the appropriation act.

“Case 3 (c). The same facts as 3 (b) except that Union A files its charge of a violation of Section 8 (2) 11 months after the date of the first agreement and 1 month preceding its expiration. Upon the expiration date, the company signs another agreement with Union B.

*“Answer:* If the conclusion with respect to Case 3 (b) is sound the reasoning on which it was based also disposes of this case. It is true that the charge was filed too late under the Appropriations Act to permit any proceeding involving the first contract. But since this contract expired shortly after the charge was filed, the employer



signed the second contract with notice of the fact that the legality of the labor organization involved had been drawn into question. Moreover, since the charge preceded the new contract it cannot be claimed that the Appropriations Act is applicable to any new contractual relationship with Union B."

Your suggested answer appears to be based on the view that once charges involving a particular contract are filed—whether timely or not—the three months' period stipulated in the "rider" is no longer operative so far as concerns new agreements of a similar nature that subsequently may be entered into. With that view however, I cannot agree. Since the charges in this case were filed more than three months following the execution of the first agreement, obviously they were of no force or effect during the life of that agreement; and I find no substantial basis for holding that the execution of the second agreement automatically revived said charges. As the charges were not for consideration when filed, the situation, in so far as the "rider" is concerned, would appear to be the same as if no charges had been filed. Moreover, the excerpts from the debates on the "rider" set forth at length in the decisions of July 29 and October 21, 1943, *supra*, clearly evidence the intention of the Congress that existing agreements be preserved unless charges are filed within three months after such agreements are entered into. Hence, the determining factor as to whether the Board may assume jurisdiction is the time of the filing of the charges as it relates to the date of the execution of the agreement affected. It would seem to follow as a logical consequence that an existing agreement may be abrogated only upon the timely filing of charges arising



out of that particular agreement. Since, in the present matter, the charges referred to were filed prior to the execution of the second agreement, it must be held that unless there was a new filing of charges after the execution of the agreement and before it had been in existence three months, the appropriation would not be available for use in connection with a complaint case arising over such agreement.

“Case 4 (a). The facts are the same as in case 3 (a) *supra*, except that the contract with Union B was executed on January 1 and contains a clause which provides that it shall remain in force until December 31 and from year to year thereafter, subject to termination or modification by either party on 30 days’ written notice prior to December 31. The year elapses without either party giving notice of termination or modification. One month later, a charge of a violation of Section 8 (2) is filed by Union A.

“*Answer:* The question whether or not the Board has jurisdiction to entertain this charge under the Appropriations Act depends upon whether the contract is deemed to have been in effect for 13 months or for 1 month. To answer this question resort must be had to the common law of contracts. It is submitted that the failure to give notice created a new agreement which was not ‘in existence for 3 months or longer without complaint being filed.’ As the Supreme Court of Michigan stated in an analogous situation, ‘it is very clear that all such contracts must be mutual, and that where a right is reserved to a party to renew or dissolve an obligation, the determination of such party to renew an expired

contract, if accepted by the other, makes an original contract.<sup>4</sup> In the instant case, the obligation of the parties came to an end at the expiration of the period over which the original agreement extended, and it was only by the concurrence of the will of both parties that the obligation could be continued. The employer and the labor organization had the right, mutually reserved to them, to renew or dissolve the obligation. The concurrence of wills required to renew the obligation was manifested by an exchange of promises by both parties to enter into a new agreement containing the same terms as the pre-existing agreement. This exchange of promises was evidenced by the conduct of both parties in failing to give notice of modification or termination of the original agreement.<sup>5</sup> Viewed as a statute of limitations, the running of the 3-month period was revived when the new agreement came into existence.<sup>6</sup> Within that 3-month period, a charge was filed affecting the new agreement.”

As you suggest, the question here involved is whether the failure of either party to give notice of termination of the agreement results in the continuation or extension thereof, or in the making of a new agreement. If the latter be true, the charges timely were filed and the exercise of jurisdiction by the Board in the case would be proper. An examination of the authorities discloses no

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<sup>4</sup>*Brady v. Northwestern Insurance Company*, 11 Mich. 425, 443-444; see also *Jenkins v. Covenant Mutual Life Insurance Co.*, 171 Mo. 375, 71 S. W. 688, 690; *Hartford Fire Insurance Co. v. Walsh*, 54 Ill. 164, 5 Am. Rep. 115.

<sup>5</sup>It is, of course, immaterial that the exchange of promises was evidenced by negative conduct. *Restatement of the Law of Contracts*, Section 21.

<sup>6</sup>It is elementary that a debt or other obligation, barred by a statute of limitations, is revived by a new promise. *Alexandria v. Clarke*, 2 F. Case No. 844.

analogous precedents other than landlord and tenant cases which deal with the question as to whether the effect of an option clause in a lease is to create a new term or to continue the old one. However, those cases appear to be in such irreconcilable conflict as to be of little or no value in reaching a proper determination of the question here involved.

The complicated and conflicting rules in the various jurisdictions, for determining whether a new term commences upon the exercise of, or failure to exercise, an option clause in a lease are set forth in detail in III Thompson, *Real Property* (1940), sections 1264-1276, and I Tiffany, *Landlord and Tenant* (1910), section 219. Briefly, as those authorities state, the question of whether the operation of an option clause results in the commencement of a new term, or the continuance of the old, for specific purposes, depends upon the particular words used in the clause and the intention of the parties. In some states, the option is held to call for the execution of a new lease and, therefore, that a new term must commence (III Thompson, *supra*, sections 1264, 1266: "An option to renew does not create a present demise of the additional term but amounts to no more than a covenant to grant the term"). Moreover, even in those cases and jurisdictions where a new lease is not required there is a conflict as to whether a new term commences, or whether the old one continues, by virtue of the operation of the option clause (I Tiffany, *supra*, sections 219, 224; III Thompson, *supra*, section 1264:

"A distinction between a stipulation to renew a lease and one to extend it for an additional period beyond the

original term is usually made. The former usually requires the execution of a new lease, while the latter does not. \* \* \* Covenants for extension of leases have been construed in two different senses. The first is that the leasehold estate is measured by the sum of two terms, with an option in the lessee to terminate it at the end of the first-named term. The second theory is that under such a covenant two estates are created in the lessee, one commencing at the termination of the other at the election of the lessee”).

Some of the varying purposes for which particular option clauses have been held either to result in a new term, or in a continuance of the original term are summarized in I Tiffany, *Landlord and Tenant* (1910), section 219, as follows:

“In a number of cases the question has arisen whether a lease for a certain term, with a right of renewal for another term, was a lease for the sum of two terms, for the purpose of determining whether it was within the operation of a particular statute. It has been decided, for the purpose of determining the applicability of a statute restricting the period for which a lease can be made, that the lease is invalid if the sum of the original term and of the renewal term exceeds the period named in the statute, and a like view has occasionally, though not always, been asserted in determining the applicability of the Statute of Frauds. Likewise such a lease has been regarded as within a recording act which purports to cover leases for a period longer than the original term.

“A statutory provision that a tenant under a lease for less than a period named should have a right to purchase

the reversion has been held to apply to a lease for a shorter period than that named, when there was a right of renewal which might extend the holding beyond that period. And, conversely, a prohibition of the assignment of a lease of less than a certain period has been held not to apply when there was such a right of renewal. In one state, on the other hand, the view has been taken that the period for which a renewal could be obtained should not be added to that of the original term for the purpose of making up a term of five years within the statute allowing a redemption, under the summary proceeding statute, in the case of such a term.

“Where a privilege of extension, as distinct from a right of renewal is given, since the lease creates both the original term and the period of the extension, the lease would seem to be invalid if it is oral merely, and the sum of the two periods exceeds the limits imposed by the Statute of Frauds, even though the first term named is within those limits. There are decisions to that effect, but the contrary view has also been taken.”

You refer to the case of *Brady v. Northwestern Insurance Company*, 11 Mich. 425, as involving an analogous situation. The following quotation from that case contains the statement of the facts involved and that portion of the opinion which is deemed relevant here:

“The plaintiff in this case was insured by the defendants in the sum of two thousand dollars, upon his warehouse, on the first day of January, 1856, for one year. The policy of insurance contained, among others, this provision: ‘This insurance (the risk not being changed) may be continued for such further time as shall be agreed on;



the premium therefor being paid and indorsed on this policy, or a receipt given for the same.' The obligation of the defendants seems to have been renewed every succeeding year, under this stipulation; and upon such renewed obligation, dating from the first day of January, 1861, this action arises.

"Between the years 1856 and 1861, certain ordinances were adopted by the common council of Detroit, for preventing the restoration or reconstruction, within certain boundaries, of wood buildings which might be injured or destroyed by fire. After the passing of these ordinances, the policy was renewed on payment of the premium originally stipulated, and after being countersigned by the resident agent. The question now presented is whether the liability of the defendant is under the promise of 1856 or that of 1861; in other words, was the undertaking of 1856 made a continuous undertaking, to be construed by the laws and ordinances as they existed in 1856 solely, or, by the renewal, were the parties bound by the laws and ordinances existing at the time of such renewal?

"We have no doubt that each renewal of the policy was a new contract. Each was upon a new consideration, and was optional with both parties. *At the expiration of the year over which the original policy extended, the obligation of the insurer was ended, and it was only the concurrence of the will of both parties that the obligation could be continued.* This concurrence is manifested by the payment of a consideration by the one party, and a renewed promise by the other; and an obligation revived or continued under such circumstances, is an original obligation. It must be asked for by the one, and may be assumed or



refused by the other; and the policy, which is its evidence, is therefore only continued by the positive act of both parties. This is according to the terms of the policy and of the certificate of renewal; and the fact that the insurance company, by the very terms of the certificate of renewal, required payment therefor, and that such certificate should be countersigned by the resident agent before it should become operative, shows that the company regard the renewal as a new contract, made at their option, and dependent in some degree upon the judgment and knowledge of such agent. Thus, if the agent should find the property depreciated in value, or the risk increased from any cause, he could refuse to countersign the renewal receipt, and the promise by the company to renew the policy would be thereby terminated. Now, it is very clear that all such contracts must be mutual, and that where a right is reserved to a party to renew or dissolve an obligation, the determination of such party *to renew an expired contract*, if accepted by the other, makes an original contract.” (Italics supplied.)

It is believed that the above cited case is readily distinguishable from the present matter, since by its terms the agreement there involved was to be in effect for but one year and contemplated the making of a new agreement upon its expiration if the parties so desired. The salient factor to be observed is that upon the conclusion of the term covered by the policy it became, as the court stated, an “expired” contract. Hence, any renewal thereof necessarily would result in the entering into of an original contract.

By letter dated March 10, 1944, the General Counsel of the National Labor Relations Board directed attention to the case of *Patrick Cudahy Family Co. v. Bowles*, 138 F. 2d 574, as supporting the views of the Board with respect to the instant question. In that case a landlord filed a petition with the Office of Price Administration for an increase in maximum rent as permitted by section 5(a)(5) of Maximum Rent Regulation No. 35, as amended by Supplementary Amendment No. 9, in those instances where: "There was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941, requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942." The lease involved was executed on January 16, 1939, and covered a two-year term beginning May 1, 1939, and ending April 30, 1941, it being provided that "this lease shall stand, without notice from either party, renewed on identical terms for a like successive period unless either party shall at least sixty days before the expiration of the demised period notify the other party in writing to the contrary." Neither party gave the notice provided for and the tenant was still in possession of the premises, under the agreement, on March 1, 1942. The landlord contended that the whole period of occupancy under the agreement comprised but a single term commencing May 1, 1939, and, hence, that there "was in force on March 1, 1942, a written lease, for a term commencing on or prior to March 1, 1941." The Price Administrator contended that the term of the lease in force on the maximum rent date did not commence until May 1, 1941.

The court agreed with the Price Administrator, holding as follows:

“The original term ran from May 1, 1939, through April 30, 1941. A renewal of the lease for a further two-year period could be made only by mutual assent. In the original rental agreement executed January 16, 1939, the parties each agreed that such further assent would be evidenced by silence, i.e., by failure to give notice to the contrary at least sixty days before the expiration of the original demised period. *When the last day for giving such notice expired, without either party having done so, they in effect bargained for an additional two-year term running from May 1, 1941, through April 30, 1943.* We agree with the Administrator that the adjustment provision should have throughout the country a uniform interpretation conformable to the purposes of the rent regulation, irrespective of whether, under the law of a particular state, the effect of the renewal clause would be to create a new term or to continue the old within the meaning of a local statute of frauds or recording act. It is recognized, of course, that matters concerning the title and disposition of real estate are determined by the law of the jurisdiction in which such property is located; but here the matter at issue concerns the interpretation of a regulation issued by a federal administrative agency.

\* \* \*

While there would appear to be a superficial analogy between the case just referred to and the factual situation here considered, yet, for reasons hereinafter stated, it is not believed that the *Cudahy case* is controlling. At the outset it will be observed that the court's decision—in ap-

parent recognition of the conflict in the pertinent decisions hereinabove referred to—stemmed from its desire to give the adjustment provision a uniform interpretation throughout the country, regardless of the law of the particular State relating to the effect of the renewal clause. It will be noted, also, that the OPA regulation emphasizes the date of the commencement of the term and not the date of the execution of the lease. In that connection, the court held that upon the expiration of the period of notice specified in the agreement the parties bargained for an additional two-year term; but the court did not hold that the parties entered into a new lease, nor does it indicate that the execution of a new lease was deemed necessary. That question was not before the court; the question for determination was whether the further period of occupancy by the tenant constituted a part of the original term or was a new and additional term. Under these circumstances, there is room for the view that the court held, in effect, that the *lease* was extended or continued to cover an additional term. But, however that may be, the labor agreement to which you refer is, by its terms, to remain in force not only for one year but “from year to year thereafter.” The fact that it may be terminated or modified by the communication of notice by either party 30 days prior to its anniversary date does not compel the view that the parties contemplated a new agreement at the end of each year. On the contrary, the proper view would appear to be that the contract is one which, by the force of its provisions, is to be continued or extended indefinitely, so long as the notice of termination prescribed therein is not given. While the matter is not free from doubt, yet, since the clear intention of the Congress in

enacting the "rider" was to leave undisturbed *existing* agreements (see 23 Comp. Gen. 293, *supra*), it would seem inappropriate to indulge in technical legal refinements for the purpose of construing the extension of the contract as the making of an original agreement. Therefore, I am constrained to hold that in this case there is a continuation or extension of the agreement and, the charges not having been timely filed, that the appropriation is not available for use in connection therewith.

"Case 4 (b). Facts same as Case 4 (a), except that the charge is filed 31 days before the expiration of the first contract, i.e., on the day preceding the beginning of the 30-day notice period.

"*Answer:* If the answer to Case 4 (a) is sound, it is submitted that the Appropriations Act does not bar the Board from entertaining this charge since it was filed in time to put the company on notice that if it permitted the automatic renewal clause to go into effect it would be doing so in the face of a complaint with respect to the nature of Union B. In other words the problem presented here is the same as 3 (c) *supra*.

"Case 4 (c). The X Manufacturing Company signs a contract with Union A which represents a majority of the employees. This contract contains the same clause which is set forth in Case 4 (a). Prior to the 30-day notice period Union B, a rival labor organization, files with the Board a petition to determine the exclusive bargaining representative pursuant to Section 9 of the Act. The 30-day notice period then expires without either party giving notice of termination or modification of the contract. Two months after the expiration of the 30-day



notice period, the representation proceeding results in the certification by the Board of Union B as the exclusive bargaining representative under Section 9 (a) of the Act. Two months after this certification Union B files a charge affecting the contract.

*“Answer:* In the absence of the Appropriations Act the Board, on these facts, would find that the second contract was illegal because it was continued in effect after the Board had certified a different bargaining agency, and the Board would order it set aside. Whether or not the Appropriations Act prohibits the Board from taking jurisdiction in this situation depends on whether the 3-month period of limitation should be deemed to run from the date of the second contract or from the date of the certification. If the answer to Case 4 (a) is sound, it may be argued on the one hand that the 3-month period of limitations begins to run from the date of certification because the second agreement was originally lawful and did not become subject to attack until it was treated as operative in the face of the certification of a different representative; on the other hand, it may be argued that the 3-month period begins to run from the date of the second agreement because the agreement was in existence during that entire period.”

In view of the conclusion reached in case 4(a), above, it must be held that the charges were not filed in time in either of these situations and that the “rider” would preclude the use of the appropriation in connection with a complaint by the Board in such cases.

“Case 5. In order to forestall the organizational efforts of Union A, X Manufacturing Company tells its



foremen to persuade the employees to form an organization known as Union B to which it contributes money. It then recognizes Union B as the bargaining agent and signs a contract with it. One month before the expiration of this contract a charge alleging violation of Section 8 (2) is filed. The officers of Union B thereupon hold a meeting, form a successor organization called Union C, and inform the membership of Union B that this organization is to be dissolved but that Union C is its successor. The assets and liabilities of Union B are thereupon transferred to Union C. At the expiration of the contract with Union B, the company signs a contract with Union C.

“*Answer:* In the absence of the limitation on the Appropriations Act, the Board would have jurisdiction to find not only that the formation of Union B was a violation of Section 8 (2), but also that Union C was a dominated organization, since it was the outgrowth or product of Union B. It is well established that in the absence of a clear line of cleavage between the two organizations the successor union is but the continuation or *alter ego* of the predecessor.<sup>7</sup> It is submitted that if the answer to Case 3 (c) is sound, the limitation in the Appropriations Act does not deprive the Board of jurisdiction in this situation. In other words, the original charge pending at the time of the execution of the agreement with the successor organization applies to Union C and to the agreement executed with it with the same force as if Union B had re-

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<sup>7</sup>See for example, *N. L. R. B. v. Newport News Shipbuilding and Dry Dock Corp.*, 308 U. S. 241; *N. L. R. B. v. Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50; *Westinghouse Electric & Mfg. Co.*, 112 F. (2d) 657 (C. C. A. 2), affirmed 312 U. S. 660; *Sperry Gyroscope Co. v. N. L. R. B.*, 129 F. (2d) 922 (C. C. A. 2); *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67 (C. C. A. 3); *Colorado Fuel & Iron Corp. v. N. L. R. B.*, 121 F. (2d) 165 (C. C. A. 10).

mained in existence and was the signatory to the second contract. Under this view of the case, the analogy to case 3 (c) *supra* is clear.”

As the basic question here is identical to that involved in case 3(c), *supra*, the conclusion reached therein is equally applicable in this case.

“*Case 6.* In order to forestall the organizational efforts of Union A, X Manufacturing Company tells its foremen to persuade the employees to form an organization known as Union B, to which it contributes money. It then recognizes Union B as the bargaining agent and signs a contract with it. One month after the execution of this contract, Union A files a charge alleging a violation of Section 8 (2). Thereafter, Union A is permitted to withdraw its charge, without prejudice, so that a consent election may be conducted with Unions A and B on the ballot. Union A loses the election. The Company then continues to give effect to its contract with Union B and to contribute money to it. Four months after the execution of this contract, Union A again files its charge alleging a violation of Section 8 (2).

“*Answer:* In the absence of the Appropriations Act, the Board on these facts would deem the actions of the Company a violation of Section 8 (2) of the Act. It is our view that the limitation in the Appropriations Act would probably prohibit the Board from taking jurisdiction in this situation on the analogy to the proposition that a suit voluntarily withdrawn does not toll a statute of limitations. However, it may be argued that the literal language of the Appropriations Act has been satisfied since the contract was once made the subject of a charge

at a time when it had been in existence less than three months.”

Inasmuch as the “rider” must be accepted as establishing a period of limitations, it would seem necessary that in this case there be applied the established doctrine that a suit voluntarily withdrawn cannot be availed of in a subsequent action so as to arrest the running of a statute of limitations. Accordingly, I agree with the view that the Board is precluded from using the appropriation to take jurisdiction in this case.

“Case 7. Union A is certified by the Board as the duly chosen bargaining representative of the employees of the X Manufacturing Company. Union A then requests the Company to bargain with it with respect to wages, hours and working conditions. The Company refuses and, instead, signs a closed-shop contract with Union B, a rival labor organization, which represents a small minority of the employees. Four months after the execution of this contract, Union A files a charge alleging a violation of Section 8 (5).

“*Answer:* In the absence of the Appropriations Act, the Board on these facts would deem the actions of the Company a violation of Section 8 (5), because Union A, being the representative of a majority of the employees in the appropriate bargaining unit, was *exclusively* entitled, under Section 9 (a), to act as the bargaining agent, and the company’s refusal to recognize it was an unfair labor practice. In such cases the remedial order of the Board would direct the company to bargain exclusively with Union A. This would necessarily mean that the company could no longer give effect to its contract with

Union B. Under the limitation in the Appropriations Act, we therefore deem the Board without jurisdiction in this case, since such a proceeding would indirectly invalidate the agreement with Union B which was in effect for 3 months without a charge being filed.”

For the reasons stated in your answer, *supra*, I agree that the restriction on the use of the appropriation precludes the Board from taking jurisdiction in this case.

“Case 8. Union A is certified by the Board as the duly chosen bargaining representative of the X Manufacturing Company. Union A then requests the Company to bargain with it with respect to wages, hours, and working conditions. The Company refuses and Union A files a charge alleging a violation of Section 8 (5). Immediately after the filing of the charge, the Company signs a closed-shop contract with Union B, a rival labor organization, which represents a small minority of the employees. Four months later employee Jones is discharged for refusing to join Union B. The next day the 8 (5) charge is amended to include a violation of Section 8 (3). The Company contends that the Board is without jurisdiction to hear evidence on the alleged violation of Section 8 (3) since this would put into issue the validity of the closed-shop contract—a contract which had been in effect for more than 3 months before a complaint of a discriminatory discharge was made.

“*Answer:* In the absence of the limitation in the Appropriations Act, the Board would have jurisdiction to deem the Company in violation of Section 8 (5) and of Section 8 (3). The closed-shop agreement would not be a defence, not only because Union B represented less than

a majority, but also because this contract was made at a time when the company had a duty under Section 8 (5) to bargain only with Union A. It is clear that the limitation in the Appropriations Act would not bar the Board from taking jurisdiction of the 8 (5) charge since it was filed before the closed-shop agreement was executed. In other words, the agreement would not be a defence. It is submitted that the Appropriations Act does not deprive the Board of jurisdiction over the amended charge of a violation of Section 8 (3) since the contract which the Company cites in its defence was made when it was already on notice of the exclusive bargaining status of another labor organization.

“As pointed out by the Comptroller General in his opinion of October 21, 1943, B-37051, the limitation in the Appropriations Act was directed to the use of the Board’s funds in making existing contracts the subject of inquiry in complaint cases, ‘regardless of the nature of the unfair labor practices that may be in issue in a particular case.’ The purpose of Congress was, not to immunize unfair labor practices as such from the remedial processes of the Board but, to preserve *existing contracts* in cases in which timely charges were not filed. Hence, once a timely charge affecting the contract has been filed, the 3-month period of limitation had been tolled for all purposes in so far as that agreement is concerned, for the reason that the necessary effect of proceeding on one phase of the charge would be to abrogate the agreement for all purposes and in all respects.”

It is an unbroken rule of law that an amendment of a pleading which introduces a new or different cause of ac-



tion and makes a new or different demand does not relate back to the beginning of the action, so as to stop the running of a statute of limitations, but is the equivalent of a fresh suit upon a new cause of action, and the statute continues to run until the amendment is filed. 37 C. J. 1074; *Union Pacific Railway Company v. Wyler*, 158 U. S. 285; *Miller v. Hamner*, 269 F. 891; *Walker v. Iowa Cent. Ry. Co.*, 241 F. 395. Since, as hereinbefore indicated, the "rider" must be accepted as establishing a period of limitations, no reason is apparent for not applying the cited rule to the present situation. As it is plain that the amendment of the 8(5) charge to include a violation of section 8(3), results in the introduction of a new and additional charge as to which there is placed in issue an agreement which has been in effect for more than three months, I am constrained to hold that the use of the appropriation in connection with any attempt of the Board to assume jurisdiction to hear the section 8(3) charge is not authorized.

Respectfully,

/s/ LINDSAY C. WARREN

*Comptroller General of the United States.*





No. 10709

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MARVIN S. NICHOLS,

Appellant,

vs.

J. J. NEWBERRY COMPANY, a corporation,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Eastern District of Washington  
Northern Division

FILED

MAY 25 1944

PAUL P. O'BRIEN,  
CLERK













No. 10709

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United States  
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Northern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

BERNARD L. SWERLAND,

Old National Bank Building  
Spokane, Washington

Attorney for the Appellant

EDGE, DAVENPORT, KEITH & dePENDER,

Paulsen Building,  
Spokane, Washington

Attorneys for the Appellee

In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision

No. 296

MARVIN S. NICHOLS,

Plaintiff,

vs.

J. J. NEWBERRY COMPANY,

Defendant.

### AMENDED COMPLAINT

Plaintiff, complaining of the defendant, alleges,  
as follows:

#### I.

That plaintiff is, and at all times hereinafter mentioned, has been a resident of Spokane County, State of Washington.

#### II.

That at all the times hereinafter mentioned the defendant J. J. Newberry Company was and is a foreign corporation doing business in the city of Spokane, Washington, and engaged in the operation of a department store at premises located at 620 Riverside Avenue in the City of Spokane.

#### III.

That in or about the Spring of 1941 and continuing to the first day of September, 1942, the defendant did, with the intention and design to injure, disgrace and defame this plaintiff, and to bring him into public discredit and obloquy, falsely and mali-

ciously compose, utter and publish, of and concerning the plaintiff, a false, scandalous, malicious, and defamatory libel consisting of a photograph and representation of the said plaintiff in which said libel and photograph the plaintiff is clearly marked and pointed out as a "check artist". That upon said photograph were contained certain identifying numerals such as are customarily placed upon photographs of persons with criminal records by law enforcement agencies. That the said libel and photograph was included in other photographs of [1\*] persons having criminal records and of unsavory reputations. That the defendant did cause the said libel and photograph to be placed in its premises located at 620 Riverside Avenue in the City of Spokane and widely disseminated and published, with actual malice, and wrongful and willful intent to injure plaintiff.

#### IV.

That by the foregoing false, malicious and defamatory picture and publication, the defendant intended to convey the meaning, and the said photograph and picture was by the persons who observed the same in the premises of the defendant J. J. Newberry Company understood and believed to convey the meaning that plaintiff was a passer and forger of bad checks and a criminal, and that plaintiff had been guilty of a crime. That said publication was false, malicious and defamatory, and plaintiff was not and never has been guilty of passing or forging

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

checks, or of criminal conduct or fraud and never had been convicted or guilty of any crime whatever.

V.

That by reason of the aforesaid a great number of persons in the premises of the defendant saw said photograph and picture, and plaintiff has suffered pain and mental anguish and has been greatly injured, and has suffered in his good name and reputation and character, and has been and is brought into public scandal, and infamy and disgrace amongst the good citizens of his community to plaintiff's damage in the sum of Fifty Thousand (\$50,000) dollars, no part of which has been paid.

Wherefore plaintiff demands judgment against the defendant in the sum of Fifty thousand (\$50,000) Dollars, in addition to the costs and disbursements of this action, and such other and further relief as to the Court may seem just and proper.

BERNARD L. SWERLAND

Attorney for Plaintiff [2]

State of Washington,  
County of Spokane—ss.

Marvin S. Nichols, being first duly sworn upon his oath deposes and says: that he is the plaintiff in the above entitled action; that he has read the above and foregoing Amended Complaint, knows the contents thereof, and that the same are true as he verily believes.

MARVIN S. NICHOLS

Subscribed and sworn to before me this 17th day of February, 1943.

(Seal)

MICHAEL J. KERLEY

Notary Public in and for the State of Washington,  
residing at Spokane.

Copy received this 25th day of Feb. 1943.

EDGE

Attorney for deft.

[Endorsed]: Filed Feb. 26, 1943. [3]

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[Title of District Court and Cause.

MOTION FOR ORDER GRANTING LEAVE TO  
AMEND RECORD AS TO DIVERSITY OF  
CITIZENSHIP

Comes now the above named plaintiff and respectfully moves the Court for an Order granting leave to the plaintiff to amend the Amended Complaint and record as follows:

I.

“That plaintiff is, and at all times hereinafter mentioned, has been a citizen of the State of Washington and a resident of Spokane County, State of Washington.”

This Motion is based upon the records and files herein, the affidavits of Bernard L. Swerland and Marvin S. Nichols, annexed hereto and upon Title



28, United States Code Section 399, Rule 75 of the Rules of Civil Procedure.

BERNARD L. SWERLAND

Attorney for Plaintiff

Copy received this 6th day of March, 1944.

LESTER EDGE

Attorney for defendant

[Endorsed]: Filed Mar. 8, 1944. [4]

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[Title of District Court and Cause.

AFFIDAVIT IN SUPPORT OF  
APPLICATION TO AMEND

State of Washington,  
County of Spokane—ss.

Marvin S. Nichols, being first duly sworn on his oath says: that he is the plaintiff in the above entitled action and resides with his family at 614 East Broad, in the City of Spokane, Washington, and respectfully submits this affidavit in support of an application to amend the amended complaint and record herein to indicate the citizenship of deponent, which in fact existed at the time of the commencement of this action.

That deponent was born in Marsburg, Pennsylvania, on November 16, 1900, and is and has been since a citizen of the United States of America; that in 1937 deponent and his family settled in the City of Spokane, State of Washington, wherein he has been permanently domiciled ever since; that de-

ponent has voted in the City of Spokane, State of Washington, and presently is and has been since 1937 a citizen of the State of Washington and the United States of America.

MARVIN S. NICHOLS

Subscribed and sworn to before me this 6th day of March, 1944.

(Seal)

MICHAEL J. KERLEY

Notary Public in and for the State of Washington,  
residing at Spokane [5]

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[Title of District Court and Cause.]

AFFIDAVIT OF BERNARD L. SWERLAND

State of Washington,  
County of Spokane—ss.

Bernard L. Swerland, being first duly sworn on oath deposes and says: that he is the attorney for the plaintiff in the above entitled action; that he respectfully submits the within Affidavit in support of an application to amend the Amended Complaint and the record as to the diversity of citizenship of the parties therein. Deponent respectfully submits, as appears from the record of the trial of this case and the affidavit of Marvin S. Nichols, hereto annexed, that the said plaintiff is a citizen of the United States of America and of the State of Washington, and was a citizen at the time of the commencement of the above entitled action. That although plaintiff was in fact a citizen of the State of Wash-

ington the Amended Complaint defectively alleged his citizenship. Deponent therefore respectfully prays for leave to amend the Amended Complaint of plaintiff and the record herein so as to properly allege the diversity of citizenship which in fact existed, in accordance with Title 28, U. S. Code Section 399.

BERNARD L. SWERLAND

Subscribed and sworn to before me this 6th day of March, 1944.

(Seal)

MICHAEL J. KERLEY

Notary Public in and for the State of Washington,  
residing at Spokane [6]

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[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO PLAINTIFF  
TO AMEND RECORD AND AMENDED  
COMPLAINT AS TO DIVERSITY OF  
CITIZENSHIP

Plaintiff having filed his Motion praying for an Order granting leave to amend the record and Amended Complaint, as to the diversity of citizenship, and the said Motion having come on regularly for hearing before the Court, and the Court being fully advised in the premises, and due deliberation having been had;

It Is By the Court Ordered: That the said Motion shall be, and the same is hereby in all respects granted, and the Amended Complaint and record

of the trial of the above entitled action is amended by indicating that the plaintiff is a citizen and resident of the State of Washington.

Done in open Court this 8th day of March, 1944.

L. B. SCHWELLENBACH

U. S. District Judge

Presented by

BERNARD L. SWERLAND

Copy received and foregoing Order is consented to

LESTER EDGE

one of the

Attorneys for Defendant

[Endorsed]: Filed March 8, 1944. [7]

---

[Title of District Court and Cause.]

ANSWER

The defendant for answer to the amended complaint of plaintiff herein admits, denies and alleges as follows:

I.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph I of said amended complaint.

II.

Defendant admits the first four lines of Paragraph II of said amended complaint.

## III.

Defendant denies, "That in or about the spring of 1941 and continuing to the first day of September, 1942, the defendant did, with the intention and design to injure, disgrace and defame this plaintiff, and to bring him into public discredit and obloquy, falsely and maliciously compose, utter and publish, of and concerning the plaintiff, a false, scandalous, malicious, and defamatory libel consisting of a photograph and representation of the said plaintiff in which said libel and photograph the plaintiff is clearly marked and pointed out as a 'check artist'."

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment in said Paragraph III, "That upon said photograph were contained certain identifying numerals such as are customarily placed upon photographs of persons [8] with criminal records by law enforcement agencies. That the said libel and photograph was included in other photographs of persons having criminal records and of unsavory reputations."

Defendant denies, "That the defendant did cause the said libel and photograph to be placed in its premises located at 620 Riverside Avenue in the City of Spokane and widely disseminated and published, with actual malice, and wrongful and willful intent to injure plaintiff."

## IV.

Answering Paragraph IV, defendant denies, "That by the foregoing false, malicious and defamatory picture and publication, the defendant intended to convey the meaning, and the said photograph and

picture was by the persons who observed the same in the premises of the defendant J. J. Newberry Company understood and believed to convey the meaning that plaintiff was a passer and forger of bad checks and a criminal, and that plaintiff had been guilty of a crime."

Defendant denies, "That said publication was false, malicious and defamatory."

As to the allegation, "And plaintiff was not an never has been guilty of passing or forging checks, or of criminal conduct or fraud and never had been convicted or guilty of any crime what ever," defendant is without knowledge or information sufficient to form a belief.

V.

Answering Paragraph V, defendant is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph V of said amended complaint.

Defendant denies that plaintiff has been damaged in the sum of Fifty Thousand (\$50,000.00) Dollars, or in any other sum by reason of any acts of this defendant. [9]

Wherefore, defendant having fully answered prays plaintiff take nothing by this action; that the same be dismissed; and that it recover its costs and disbursements herein expended.

EDGE, DAVENPORT, KEITH  
& dePENDER

By LESTER EDGE

Attorneys for Defendant.



Received copy hereof this 21 day of April, 1943.

B. L. SWERLAND

Atty for Plaintiff

[Endorsed]: Filed April 23, 1943. [10]

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[Title of District Court and Cause.]

### NOTICE OF TRIAL AMENDMENT

To the Plaintiff and To Bernard L. Swerland, his attorney:

Please take notice that at the opening of the trial in the above-entitled action the defendant will move the court for leave to amend its answer herein by adding the following affirmative defenses:

For a first affirmative defense defendant alleges:

The Police Department of the City of Spokane furnished to defendant the photograph complained of as being the photograph of one who had passed worthless or questionable checks. Defendant relied on the representations of the Police Department, and any communication of said photograph by defendant was made in good faith and without malice.

[Marginal Note]: Stricken by Court

For a second affirmative defense defendant alleges:

Defendant conducts a retail variety store in the City of Spokane. Customers frequently tender checks to defendant's employees in payment of purchases, and defendant has suffered losses from cashing checks which have been forged, or which have been drawn against accounts in which the maker

had no funds or insufficient funds. The Police Department of the City of Spokane furnished to the Retail Trade Bureau, an organization of merchants, photographs of persons who had been found to have passed worthless or questionable checks, so that the photographs could be shown to the employees of retail stores, in order to prevent the acceptance of such checks. Any photographs posted by defendant were furnished in the manner and for the purpose aforesaid by the Police Department of the City of Spokane, and if defendant published plaintiff's photograph, such publication was made only to defendant's employees for the purpose, in good faith, of preventing acceptance of worthless or questionable checks in defendant's store, and was privileged.

EDGE, DAVENPORT, KEITH  
& dePENDER

LESTER P. EDGE,

Attorneys for Defendant,  
909 Paulsen Building,  
Spokane, Washington.

Received Copy Hereof This 15th day of June,  
1943.

BERNARD L. SWERLAND,  
Atty. for Pltff.

[Endorsed]: Filed June 16, 1943. [11]

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10709

MARVIN S. NICHOLS,

Appellant,

vs.

J. J. NEWBERRY COMPANY, a corporation,  
Appellee.

Date: June 21st, 1943

At Spokane, Washington

Before Hon. L. B. Schwellenbach, Judge and a  
Jury.

Appearances:

For the Plaintiff:

Mr. Bernard L. Swerland

For the Defendant:

Edge, Davenport, Keith, & dePender

### STATEMENT OF FACTS [12]

The above entitled cause coming on for hearing and for trial before the Honorable L. B. Schwellenbach, Judge, and a Jury duly empanelled and sworn to try the same, and said Jury having been duly empanelled and sworn, the following proceedings were had, testimony taken and exhibits introduced:

Mr. Swerland: Your Honor, at this time we think we should read into the record——

The Court: Let the record show that the defendant filed notice of trial amendment which consisted of a first and second affirmative defenses. There are no objections raised by the plaintiff to the filing of the amendment but the plaintiff moved to strike both of the defenses, and the Court granted plaintiff's motion to strike the first affirmative defense and denied the plaintiff's motion to strike the second affirmative defense. That the basis for striking the first affirmative defense is that all matters therein contained are also contained in the second affirmative defense. The plaintiff having had no opportunity to file a formal written reply to the affirmative defenses, permission is now granted for the plaintiff to enter a reply orally. You may do that now, Mr. Swerland.

Mr. Swerland: As and for a reply to the affirmative defense interposed by defendant the plaintiff denies each and every allegation, matter and thing contained therein. [15]

## TESTIMONY OF WITNESSES IN NARRATIVE FORM IN ORDER OF THEIR APPEARANCE

## JEAN PIERCE

called on behalf of plaintiff.

This witness testified she was in the employ of the defendant company from September 1940 to December 1941 as a sales girl. She started in the oilcloth department, then had the dress department, then the lingerie department. She further testified she wrapped packages, waited on trade and would receive payment for the merchandise from the customers but that if any checks were presented by customers they were to be taken to the cashier's cage to be cashed as the sales girls handled no checks at all.

The witness further testified that she saw a picture of the plaintiff on a bulletin board placed in the restroom for the girl employees. That the title "Check artists" was above the picture of plaintiff.

(Testimony of Jean Pierce.)

The restroom was located on the second floor of the store, was a large room with tables and chairs and couch and contained a lavatory. That the bulletin board to which the picture was attached was affixed permanently to the wall by nails. That she knew the plaintiff and recognized the photograph as his picture.

Plaintiff's Exhibit "A", consisting of a group of photographs, was shown the witness and she identified the exhibit as containing the picture she saw in the premises of the defendant company. That she visited the restroom approximately four times a day, upon arriving in the morning, rest periods during the day and upon leaving in the evening. That all the girls used the restroom and had access to it. The question was asked the witness by plaintiff's counsel: [12]

Question: Did you tell anyone after you saw it?

(Referring to the photograph.)

An objection thereto was sustained and an exception allowed to the plaintiff.

Mr. Swerland: As to the defamation—the defendant is responsible for the republication of it. There are loads of authorities on that.

The Court: To whom are you referring by "anyone"? Are you referring to the people in the store or people outside the store?

Mr. Swerland: Outside the store.

Mr. Edge: She was an employee and I don't think we are bound by what she may have said outside the store—it's hearsay.



(Testimony of Jean Pierce.)

Mr. Swerland: I don't like to discuss it, your Honor, in the presence of the jury—its clearly and very definitely in point. There are a host of authorities on it.

The Court: The Jury may retire to the jury-room for just a moment.

The jury having retired, the following proceedings were had:

Mr. Swerland: Now, with respect to the extent of the circulation of the defamation, as evidence of the injury done the claimant it is clearly admissible. *Corpus Juris* is just loaded with citations on it, and *American Jurisprudence* have an abundance of them. The very nature and type of the action indicates it's very important because of the aggravation of damages. I would like to submit it is very material here by reason of the defendant's defense. They claim it was confined to this one spot.

(Discussion.)

The Court: It seems to me the problem we have here is to determine whether or not the repetition was the natural consequence of the act of the defendant. Clearly it wasn't within the scope of employment of this young lady to have slandered somebody by repetition. She wasn't employed for that purpose—the corporation is not responsible under that theory. Now, they put up in this room these pictures, visible to their employees, and I don't think there is any presumption—in fact the presumption is the other way—that the girls would not repeat around town whom they saw up there.

(Testimony of Jean Pierce.)

Now, if you have a case where a man is a notorious gossip around town, and you go to him with a slander, or even show him a libelous picture or a libelous article of some kind, then its the natural and logical thing for you to assume that he is going to repeat it. Lots of times people pick out that sort of person in order to get a story around town. That isn't this case. These people put up this picture—I don't think you can aggravate the damage or increase the damage by showing this specific act of the girl's repetition of it. You can show that the girls saw it, or knew it, the same as you can show circulation in a newspaper.

Mr. Swerland: The point is this if some of these girls knew the plaintiff prior to this libel—knew him in the community and see this picture pointing him out as a criminal its the natural thing for that girl to——

The Court: You haven't offered to show that anybody in authority in the Newberry Store knew that Mrs. Pierce knew this plaintiff. All the way thru on this rule the responsibility for republication is within "the natural and logical consequences" of the act—it was the "natural and logical consequences" of the act, and I don't see any "natural or logical consequences" because they put up this picture in this group that they are going to assume any of the girls knew them or any of the girls would tell anybody outside of the store about it. It was information for the employees of the Newberry store.

(Testimony of Jean Pierce.)

The witness further testified that the office employees used the restroom, although they did not wait on customers as they were in the office. That a matron, Miss Stanley, usually was in the room; that she did not wait on any of the customers not so far as I know. The witness further testified that she had attended the same church as the plaintiff; that he had a good reputation; that he attended church regularly. The witness further testified that during the course of her employment she saw the plaintiff's Exhibit "A" at numerous times; that it was never taken off the wall while she was there; that she was there "about a year and a half."

The witness testified that there had been shoplifters on occasion. "While clerking in the store I was supposed to be more or less on the lookout for shoplifters." That if checks were rendered in payment of purchases by customers they were sent to the cashier to have them cashed.

"Q. And you would look at the person who handed it to you?      A. Yes.

Q. And you knew these pictures were there so that if someone handed a check and you recalled their picture being here you could report it to the store, isn't that right?      A. Yes, I believe so.

Q. In other words, if some one came up to you with a small check and you would recall seeing their picture there you probably would go to the cashier and say 'I think this party's picture is upstairs on the board'?

(Testimony of Jean Pierce.)

A. Yes, I probably would report it."

That there was a sign on the door leading to the restroom marked "employees only," which was there all the time the picture was in room. That girl clerks and people and women from the office also went in there. That she lived about two blocks from the plaintiff, had known him for several years; that she did not know what his occupation was. That the matron was usually in the room and if anyone happened by mistake into the room they were told to get out, that the room was intended for employees only.

The witness testified that during lunch hour, during Christmas and on other occasions the matron was not in the room; that anyone could walk into the room, and during those times the door was not locked; that she did not know the exact amount but thought there was approximately 75 girls in the employ of the store at any one time, which was increased during the Christmas and other holiday season; that all of the employees, whether they were office workers or wrappers or engaged in any other capacity had access to the room. [13]

That each girl had a locker in this room; that there were two tables in the room for the girls to sit at and eat lunch; that if there was any plumbing work to be done the matron did not do the work, someone else was called in and would come into the room to do the work; that the bulletin board containing the picture was placed upon a cage where

(Testimony of Jean Pierce.)

the matron was located; that there was nothing hiding the picture from the vision of anyone in the room; that if any painting or repairing was required the matron did not do it, and other persons were then required to go into the room.

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### FRANCES MOHNEY

(Called on behalf of plaintiff.)

This witness testified that she had been in the employ of defendant company as a sales girl from about a week before Easter until July of 1942.

Her testimony was to like effect as the testimony given by the witness Jean Pierce.

She testified that she had no duties with respect to checks and that if customers wanted to cash checks or pay with checks they were sent to the cashier to get the money to pay the clerks with. That she had known plaintiff, attended the same church as plaintiff and knew that he had a very good reputation but that when she saw the photographs of plaintiff she believed it might be true; that she saw the photographs several times during the course of her employment; that after her employment was terminated in July she saw the picture in that room on two occasions. On one occasion she went in to see a friend of hers that was employed there and on the second occasion she went in at the request of counsel of plaintiff to ascertain if the picture was there;



(Testimony of Frances Mohny.)

that she saw the picture there and was not restrained.

The witness further testified that she was eighteen years of age. That after she quit the store she went on strike and picketed them for a few weeks, and when she visited the employees' room following termination of her employment she knew she had no business there, and that it was against the company's rules for her to be there, and that she was not invited by anybody. That she was instructed by Mr. Swerland to get some photographer to take pictures in the room. Knowing that it was against the rules to be there; 'that the store was troubled occasionally by shoplifters and she was supposed to look out for them.' Some of the photographs were marked 'shoplifters.' That she went back to work for Newberry's for two or three days after she quit picket duty. That she had mentioned to her father and may have to other persons that plaintiff's photograph was posted in the defendant company's store under the heading of "check artists." That on or about the first of September the [14] witness had gone with a photographer to the defendant company's store to take a picture of the restroom and was advised by Mr. Waltman, the manager, that the Police had advised the defendant company to take the picture down, which had been done that morning, and prevented the witness from photographing the room. That when she saw Nichols' picture while working there and recognized it, she didn't go to the management



(Testimony of Frances Mohny.)

and make any complaint about it. That when she went to take the picture she met the floorwalker and he told her they were not supposed to enter that room and if they did the police would stop them.

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### HELEN COFFEE

called on behalf of plaintiff.

This witness was eighteen years of age and had been employed by the defendant company two days before Christmas where she had gift wrapped packages in the basement and waited on customers for about two hours; that her attention had previously been called to the picture by her sister, Mrs. Jean Pierce, and she had seen it and recognized it as a photograph of plaintiff.

Her testimony was to like effect as the witnesses Jean Pierce and Miss Frances Mohny. I worked one day. My attention was called to the photograph by my sister.

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### MISS FRANCES STANLEY

called on behalf of plaintiff.

This witness was in the employ of the defendant company at the time of the trial and for seventeen years prior thereto as floor-lady on the second floor, clerk, stock clerk and as matron. That from the Spring of 1941 to September 1942 she was matron

(Testimony of Frances Stanley.)

on the second floor; she testified that approximately sixty girls are employed in the store at one time and on holiday seasons the number of employees are increased; that there was a rapid turnover in the help at the store; that she had charge of all the girls; that the office employees did not wait on trade.

That the photographs contained in plaintiff's Exhibit "A" were placed in the bulletin board and locked and remained on the bulletin board without any change. They were there for a period of time and remained the same the whole period of time. She testified further that she cashed no checks; that any employee that received a check was instructed to send the customer to the information desk and the cashier would ascertain whether she was to cash the check or not; that [15] the cashier was the only one to pass upon the checks; that the cashier had access to plaintiff's Exhibit "A". That she left the room on lunch hours and on other occasions and left the door unlocked. That the room was cleaned by the night janitor who had access to the room and plaintiff's Exhibit "A"; that if required, plumbers would be called in and they too would have access to the room and plaintiff's Exhibit "A"; that if painting were required to be done, painters would have access to the room and plaintiff's Exhibit "A"; that if repairs were required to be done, the repairmen would have access to the room and plaintiff's Exhibit "A"; that the pictures contained in plaintiff's Exhibit "A" were not taken down each night but were firmly affixed to the wall and always

(Testimony of Frances Stanley.)

in a visible position; that the witness had no duties to perform in connection with checks; that most of the girls in the employ of the store were about eighteen. That the names of the individuals were not contained on the photographs. All girls were instructed to keep their eyes open for shoplifters or people passing bad checks, and to watch the actions of people under suspicion of being shoplifters, and to report the same to the floor lady. There were shoplifters and people passing bad checks—goes by streaks, sometimes worse than others, but after these pictures were put up in the store and other stores around there was apparently a subsidence of those activities. The entrance to the employees' room, you enter a door facing east and go along a hallway about 15 feet long and 4 feet wide, and then it opens into the employees' room. There were about six girls in the office and probably 60 all told. Sometimes the sales girls work in the office. The room in question was accessible to all the girls in the store regardless of the type of work they did.

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THOMAS J. WALTMAN

called on behalf of plaintiff.

This witness testified that he was the manager of the defendant company's store located in Spokane and had been since 1934; that under normal business conditions the average number of employees would be around 60 and that at Christmas time there

(Testimony of Thomas J. Waltman.)

would be between 140 and 180 employees at any one time; I cannot give the definite number, because I never counted them; that the restroom was located on the second floor of the store and was used by all the female employees; that the pictures contained in plaintiff's Exhibit "A" were contained in a frame and placed in the room; that these pictures were supposed to have been photographs of persons with criminal records; that he took no means to ascertain whether they actually were or not; that he did not call the Police and ask whether they actually were or not; that he did not call the Police and ask whether the particular persons whose photographs appeared on Exhibit "A" had criminal records although police numbers were contained thereon and made no inquiry whatsoever but merely took it for granted that they were; [16] We took it for granted they were persons with a criminal record when the pictures came from the police department. They were delivered by the police department to the Retail Trades Bureau; that he received the pictures from the Retail Trade Bureau at a luncheon composed of leading merchants of Spokane at the Dav-enport Hotel; that these photographs were placed on a table beside his plate, wholly uncovered, and were visible to waitresses; that the pictures were individual photographs when he received them; that he pasted them on a piece of cardboard and then put them together in a frame which was put on the bulletin board in the girls' restroom where they were kept from the early part of 1941 continuously

(Testimony of Thomas J. Waltman.)

until September 1942, a period of approximately a year and a half. That the plaintiff's picture was under the title "Check artists"; that the plaintiff's Exhibit "A" was in a visible position and not obstructed by anything; that they had two janitors, both of whom had access to the room and the plaintiff's Exhibit "A"; that the plumbers, painters, and other repairmen all had access to the room and the photographs contained in plaintiff's Exhibit "A" and were visible to them; I don't believe we had any painting done during the time the picture was up there, but I am not positive. There were no repairs made during that period; that the salesgirls and wrappers had no authority to cash checks but would refer them to the cashier; that the janitors had no duties with respect to checks. On the back of the pictures were pencil notations made by the police department and were there when we received the pictures, and we classified them according to the notations on the back. There were 13 of them altogether and no complaint was made about any of them except this one of Nichols, and the girls were instructed to be on the lookout for those parties and if they saw anybody do anything to report it to the store, which is one of our biggest problems in any store.

That the girls were instructed to be on the lookout for shoplifters; that no one was allowed in the room but the girl employees, janitors and repairmen; that the public was not allowed in the room; there was a restroom for the public use; that the



(Testimony of Thomas J. Waltman.)

photographs were delivered to the defendant company from the Retail Trade Bureau without any request. Many times they have brought other groups direct from the police department and left them with us; that the witness had been with the defendant company for fourteen years. Neither myself or our store had anything to do with the taking of this picture, or with what happened to Nichols that resulted in this picture being taken. I knew nothing about him whatever other than what I heard since. When it was finally called to my attention that there was some claim about this picture, and I didn't know which man wanted the picture or whose picture was there, and I took all the pictures down immediately.

That other than a door with a sign marked "Employees only" there was nothing to prevent the public from entering the room as the door was not locked, but it was closed. That when this witness received the photographs at the Davenport Hotel and had them in his custody upon the table, he did so as the representative for the defendant company.

[17] The Retail Trade Bureau is a branch of the Chamber of Commerce, composed of the leading merchants of Spokane and is one of the committees of the Spokane Chamber of Commerce.



## RAY MOHNEY

called on behalf of plaintiff.

The witness, a brass molder, and resident of Spokane, testified he was the father of Frances Mohney; he had known the plaintiff, attended the same church and knew that he had a good reputation, did not know what occupation plaintiff was engaged in. The question was asked by plaintiff's counsel:

Q. Didn't you know of your own knowledge that the plaintiff's picture was in Newberry's?

A. No.

Question: Did you know the picture of Mr. Nichols was in the store of the Newberry Company?

An objection thereto was sustained.

The further question was asked of the witness by plaintiff's counsel:

Question: Were you informed the picture of Mr. Nichols, the plaintiff in this action, was posted in Newberry's store, in which he was described as a "check artist"?

This was objected to as incompetent, irrelevant and immaterial and not binding on this defendant and the objection was sustained.

Mr. Swerland: At this time I submit an offer of proof along this entire line.

The witness further testified that he believed there was a picture of the plaintiff posted in Newberry's wherein he was described as a check artist, and that he believed him to be portrayed there as a person with a criminal record; that he had known Mr. Nichols, the plaintiff, for six or seven years, and prior to the time he heard of plaintiff's Ex-

(Testimony of Ray Mohney.)

hibit "A" he had always had a good reputation; that after hearing of plaintiff's Exhibit "A" he believed there might be some truth in the charge.

The question was asked the witness by plaintiff's counsel:

Question: Did you tell anyone else about it?

An objection thereto was sustained.

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A. S. MOTT

called on behalf of plaintiff.

The witness, a resident of Spokane, and a carpenter, testified he knew plaintiff about twenty years and always knew him as an honorable and respectable citizen, attended the same church. [18]

The question was asked by plaintiff's counsel:

Question: Did you believe the picture of Mr. Nichols had been posted in the store of Newberrys, originally described as a "check artist"?

An objection thereto was sustained.

An offer of proof with respect to the fact that the witness heard about the picture being there was made by counsel for the plaintiff; that the information the witness may have had was obtained from others.

The witness testified he knew plaintiff had been arrested and that he had been kept in jail for some time, and that he subsequently had been released.

The question was thereafter asked by plaintiff's counsel:

(Testimony of A. S. Mott.)

Question: These charges against him were subsequently dismissed, if you know?

An objection was interposed and sustained.

I didn't know that Newberry's store had anything to do with his difficulty. I went down to the jail and talked to him. I knew Mr. Nichols had been arrested for forging checks. I got a few friends in town and the people in our church put up money as bail for Mr. Nichols. The Newberry Company, to my knowledge, had nothing to do with what happened at the ail. I don't think they had him arrested. I think a grocer out in Hazelwood Park by the name of Hummer made the complaint against him and Newberry had nothing to do with it. Mr. Lally was deputy prosecuting attorney and had charge of the case.

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### MARVIN S. NICHOLS

called on behalf of plaintiff.

This witness, plaintiff in this action, testified as follows: That he was employed at the Rolling Mills; that he had been residing in the City of Spokane for approximately six years, prior thereto and from 1922 to 1937 had resided in St. Maries, Idaho; that he resided at Sanders, Idaho, from 1903 until 1922 and that he was born in Pennsylvania, near Marshbury. That he is a married man with a wife and three children, with whom he resided. That he had never been convicted of a crime anywhere or of a traffic violation.

(Testimony of Marvin S. Nichols.)

That he had been arrested in Spokane for forgery April 17, 1941, upon the charge of a Mr. Hummer who operated a service station and confectionery. That he had been kept in jail for twenty-seven days and nights and the charges were subsequently dismissed. That while he was in jail certain of the alleged forged checks appeared; that a man by the name of Ben Forman was subsequently arrested and convicted of the crimes of which this witness had been charged. That he did not know this Ben Forman and had never seen him.

Q. Have you ever known anyone who knew him?

A. Oh, yes.

Q. I am referring to Ben Forman, do you know anyone who knew Ben Forman?

A. Yes, I know somebody that knows him.

That the witness had never forged any checks and had an action [19] pending in the Superior Court of Spokane County, Washington, against the Police Department for false arrest. That prior to this arrest he had never been arrested in his life for anything at all; that he attended church regularly; that he never caused anyone to forge any checks for him.

That he learned that his picture was posted in Newberrys; that after learning about it he was ashamed to meet people on the street and ashamed to go into the stores; that he had been a customer of Newberrys for some time and he felt humiliated, worried about it, and lost sleep over it; that his little girl came home and said that a little boy told

(Testimony of Marvin S. Nichols.)

her in school that her daddy was a criminal; that he felt humiliated and ashamed as a result of it.

The witness identified his photographs among those contained in plaintiff's Exhibit "A"; that there was no one that he knew of that resembled him; that he felt when he went into stores that there might be people there that might have worked at Newberrys and could feel them pointing their fingers at him.

They were some folks who identified me as the man who cashed these checks. He was supposed to have cashed some checks in Paul's place, and Pearl Henderson, the grocery lady, identified me as having cashed checks. Also Elmer J. Hummer. He was the fellow that swore out the warrant for me. He identified me as the man who cashed the checks in his place; also someone from the Royal Men's Shop identified me too; also Mae Chipman who lives right across the street about 200 feet from my home, she identified me. I have a suit for damages against Mr. Colburn, City Commissioner, The Firemen's Fund Indemnity Company, Angus McDonnell, a police officer, David G. Paul and Harriet Paul. That his action against the City Commissioner and others for his false arrest had been reduced from \$60,000 to \$25,000; that certain of the defendants had been dropped from the suit; that he had worked on the WPA at \$55.00 a month for five hours work a day prior to the time he was arrested; that he was now working at the Rolling Mills and received \$7.36 a day for an eight hour day. That



(Testimony of Marvin S. Nichols.)

he was off a little over a month before he obtained a job after he was arrested; that then he worked in the woods for five dollars a day; that he lost several weeks employment and had lost several jobs but did not know why; that he had been working steadily; has been working steadily now for six months at 92 cents an hour, which is one of the highest paid jobs around Spokane. That before the six months' job he was off for 3 or 4 days; that before that he worked for the John Lewis Packing House as a carpenter getting \$1.40 an hour; that he worked at various jobs from time to time; that he knew Mr. Hummer having been in his store; that his handwriting and the handwriting on the Hummer checks was not similar; that the suit in the State Superior Court was pending. [20] I was arrested on the 17th day of April, 1941, and didn't learn about the picture at Newberry's for about six months after that which was after I had been dismissed from that case. I wouldn't know that Newberry's store had ever taken any part in my arrest.

That defense employment was more available now; that the identification of him was false and he had sued all of the witnesses that had identified him, which suit was presently pending; that he found out his picture had been put up over a year ago from his wife and neighbors who had called it to his attention; that people at his place of business had called it to his attention; that he had always prided himself on having a good reputation; that having him put in jail caused him a certain amount



(Testimony of Marvin S. Nichols.)

of anguish and humiliation and he suffered more on account of the picture that had been posted in Newberrys; that he presumed the picture was in other places too and suffered mental anguish by reason thereof; that he did not go into the Newberry store to see about the picture at any time; the fact that I was in jail and my friends knew about it didn't trouble me so much as the picture being in the store. Although I suffered a certain amount on account of hiring a lawyer, the anguish I suffered by being in jail wasn't anything compared to the anguish I suffered from the picture being down there. I suffered more on account of the picture than being locked up; that he had already been cleared of having forged any checks when this picture was up there; that he knew the pictures contained in plaintiff's Exhibit "A" had come to the attention of his friends and neighbors.

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#### ELLA C. MOTT

called on behalf of plaintiff.

This witness, the wife of A. S. Mott, testified to like effect as her husband. The witness testified further that it was her understanding that the picture of plaintiff had been posted in Newberrys store wherein he was portrayed as a check artist; that the witness had previously understood plaintiff had been cleared of the charge of forgery when she ascertained the picture was posted in Newberrys. I

(Testimony of Ella C. Mott.)

think the whole thing was a humiliation from "A" to "Z". I never investigated the case myself and know nothing about the circumstances leading to his arrest except hearsay.

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### GLADYS CLARK

called on behalf of plaintiff.

This witness, a housewife, testified she resided in Spokane eighteen years; had known plaintiff between nineteen and twenty years; knew him at St. Maries, Idaho, prior to the time he came to Spokane; knew that he had a good reputation, was an honest, law-abiding citizen. Testimony to same effect as witness Ella C. Mott and A. S. Mott. [21]

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### MRS. MILDRED NICHOLS

called on behalf of plaintiff.

This witness, the wife of plaintiff and a housewife, had been advised a little over a year ago that her husband's picture had been posted in the Newberry store wherein he was portrayed as a check artist; that after hearing of it her husband cried, was very crushed and depressed, felt ashamed to go anywhere, seemed heartbroken, spent sleepless nights; that other friends and acquaintances had called his demeanor to her attention; that they had

(Testimony of Mrs. Mildred Nichols.)

been married seventeen years; that her husband had never been in any kind of trouble at all and had never been arrested other than on the occasion testified to by her husband; that the charges had been dismissed; that when the pictures were posted at Newberrys store the charges of forgery had already been dismissed against him; that her husband had never been convicted of any crime anywhere.

That they came to the house with a warrant and arrested her husband and kept him in jail for twenty-seven days; that so far as she knew the Newberry Company had nothing to do with the arrest. That she had heard the picture was at Newberrys about a year ago; that she knew three of the girls that worked in the store.

At this point plaintiff rested his case.

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## DEFENDANT'S TESTIMONY

E. J. HUMMER

called on behalf of defendant.

That he had made the complaint against someone who had cashed a check in his place; that so far as he knew the Newberry Company had had nothing to do with the transaction. The question was asked by defendant's counsel:

Question: Was the party against whom you made the complaint, Mr. Nichols, the plaintiff in this case?

(Testimony of E. J. Hummer.)

The question was objected to on the ground that whether the witness had complained or not against the plaintiff did not constitute a defense to [22] libel and the only defense would be the truth of the charge could be proven, and upon the further ground that good faith was not a defense to this action.

The objection was overruled and the witness testified that the plaintiff was the party against whom he had made the complaint.

---

### RICHARD DUNNING

called on behalf of defendant.

That he had been, during the period involved in this trial, the Secretary of the Retail Trade Bureau of the Spokane Chamber of Commerce. The question was then asked by defendant's counsel:

Question: Did you, while Secretary of that Bureau, have to do with the distribution of some photographs that came from the Police Station?

The question was objected to and the objection overruled.

The witness testified that the Police Department had given them two sets of pictures, one having to do with shoplifters and the other having to do with check forgeries. That they distributed them to the

(Testimony of Richard Dunning.)

merchants through their Retail Bureau; that the Newberry Company did not request them to furnish them with pictures.

At this point defendant rested its case.

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## REBUTTAL TESTIMONY

### MARVIN S. NICHOLS

recalled on behalf of plaintiff.

That the charges filed by Mr. Hummer had been dismissed. [23]

Whereupon the case proceeded to argument.

After argument the Court instructed the Jury as follows:

**Judge. Schwellenbach:** Members of the Jury: You have heard the testimony and the arguments of Counsel, and it now becomes the duty of the Court to instruct you concerning the issues in the cause and the law involved with respect to those issues, and as it is the Court's duty to give you these instructions concerning the law it is equally your duty to accept these instructions as the law. There is a very distinct line and demarkation between the function of the Court and the function of the jury in the trial of any case. The function of the jury is to pass upon questions of fact and I have no right to invade that function. It is the duty of the Court to pass upon questions of law



and you have no right to invade that province. [134]

You will consider the instructions as a whole, and not place undue emphasis on any particular portion of them.

The issues in this case are made up by what is known as the 'pleadings'. You will take them with you to the jury room. They are not evidence and are not so to be considered by you. They are simply a summary at the outset of the trial of what each party expects to prove.

The plaintiff's pleadings consist of an amended complaint, in which the allegation is made that this defendant between the spring of 1941 and continuing until September, 1942, published a defamatory libel by publishing a photograph and representation of the plaintiff in which the plaintiff was marked and pointed out as a 'check Artist', and on which picture are shown identification numerals such as are customarily placed on photographs of persons with criminal records. The plaintiff alleges that the implications are not true; that he is not a check artist, and had never been convicted of a crime, and he is damaged by reason of that fact—that he suffered pain and anguish, and was brought into public discredit and disgrace among the citizens of the community to his damage in the sum of \$50,000.

To this the defendant has interposed an answer in which are made certain denials, denying any attempt on its part to injure the plaintiff; denying



upon information and belief that it ever did publish the picture of the plaintiff as [135] alleged in the complaint; denying the publication was false, malicious and defamatory, and denying the allegation, on information and belief, concerning the question as to whether or not the plaintiff ever had been guilty of passing forged checks; denies that plaintiff was damaged in the sum of \$50,000, or in any other sum. Then, on yesterday, the defendant submitted a trial amendment, or a first and second affirmative defenses. I refused to permit the first affirmative defense and I have crossed it out on this paper. The Second Affirmative defense I permitted to be submitted. It reads: "Defendant conducts a variety store in the city of Spokane. Customers frequently tender checks to defendant's employees in payment of purchases, and defendant has suffered losses from cashing checks which have been forged, or which have been drawn against accounts in which the party had no funds or insufficient funds. The Police Department of the city of Spokane furnished to the Retail Trade Bureau, an organization of merchants, photographs of persons who had been found to have passed worthless or questionable checks, so that the photographs could be shown to employees of retail stores in order to prevent the acceptance of such checks, and the photographs published by the defendant were furnished in the manner and for the purpose aforesaid by the police department of the city of Spokane,

and if the defendant published plaintiff's photograph such publication was made only [136] to defendant's employees for the purpose, in good faith, of preventing the acceptance of worthless or questionable checks in defendant's store, and was privileged."

To that the plaintiff has interposed an oral reply, this amendment having been too late for the plaintiff to prepare a paper, and that was permitted yesterday, as you will remember, so you will consider the allegations of this affirmative defense denied by the plaintiff.

You are the sole and exclusive judges of what is the evidence in the case, and the weight and credibility to be given the testimony of each witness who has appeared on each side. In doing this you may take into consideration the conduct, appearance and demeanor of the witness while testifying, his or her apparent candor and frankness, or the lack of those qualities, if any such lack appears, the reasonableness or unreasonableness of the story told by the witness, its probability or improbability measured by your common experiences in life, the opportunity or lack of opportunity on the part of the witness or knowing or being informed concerning the matters about which he or she testified; his intelligence or lack of intelligence displayed by the witness, the interest or lack of interest on the part of the witness in the outcome of this case, his bias or prejudice, if any, which would cause him to warp or

color his testimony. If you find from the evidence that any witness has wilfully testified falsely to any material fact in the case then you are at liberty to disregard the entire testimony of such witness unless [137] it is corroborated by other testimony of a credible character.

When in these instructions I use the word 'burden' I mean the burden of proof. This being a civil case the party having the burden of proof must prove his point by a fair preponderance of the testimony. The expression 'fair preponderance of the testimony' or evidence, means the greater convincing force or weight of the evidence. It means that which appears to you as the more reasonable and more probable happening or event. It does not necessarily mean the greater number of witnesses testifying to or against a given proposition or claimed fact or series of facts, nor does it make any difference by which side the evidence is offered. It means that, taking all the evidence on that particular issue into consideration, no matter which side may have offered it, the convincing weight, the proving force, of the evidence is in favor of one side as against the other. If on any issue you find the scales evenly balanced, then you must decide that issue against the party having the burden of proof on that particular point.

Now, the plaintiff has the burden of proving the allegations of this complaint, and in so far as the allegations of the complaint are denied by the de-

fendant, either directly or on information and belief, the plaintiff has that burden. The defendant has the burden of proving its affirmative defense that I just read to you, that having been denied by the [138] plaintiff. The defendant in this case issued what might be properly called a first affirmative defense and that is the defense of 'truth'. In a case of this type the burden is on the defendant of proving the truth of the defamatory matter, so for the particular purpose of this case the defendant interposes two affirmative defenses, one, the truth, and, second, the privilege which it alleges it was entitled to.

This is an action to recover damages for the publication of an alleged libel. Libel is defined as consisting of every publication by writing, printing, picture, effigy, sign or otherwise than by mere speech which shall tend to expose any living person to hatred, contempt, ridicule, obloquy, or deprive him of the benefit of public confidence or social intercourse.

I instruct you that the photograph of the plaintiff which has been exhibited to you is libel per se. If it was published by the defendant, unless it were true, or unless the publication were privileged as I will explain to you, the plaintiff is entitled to recover in damages. The burden is on the plaintiff to prove the publication. The libel must be communicated to some person other than the person defamed. This element of communication is given

the technical term of 'publication'. That does not mean that it needs to be printed in a newspaper or magazine. It may be conveyed by pictures or photographs. Nevertheless it is libelous even though it does not contain the name of the party thereon. It is not necessary that the publication be made known to [139] the public generally. It is sufficient if it is made to a single person. It is furthermore sufficient if the person is unacquainted with the plaintiff and understands the publication to refer to the plaintiff. Even though the persons having heard the defamatory matter have not believed it you may consider the fact they heard it in considering the damages in this case.

The law places upon the person or corporation making the publication the burden of proving the statements contained in the publication are true.

It is presumed that every person enjoys a good name and reputation as a citizen in the community and conducts himself with honesty and integrity.

As I have indicated before, your first problem is to determine whether or not there was a publication of this picture. If you find there was a publication and the plaintiff has sustained the burden of proving the defendant did publish this picture then the next question is whether or not what was contained thereon was true. The defendant alleges it is true and the defendant has the burden of proving that.

I have given you the standard by which you can



judge the question of burden of proof. Then we come to the second affirmative defense of defendant and that is what was done was privileged. The defendant pleads affirmatively the defense of privilege, that is to say, even though the publication was false, and even though it did publish the publication it is not liable [140] for the publication because it contends the publication was made in good faith on subjects in which it had an interest or duty and made to person or persons having a corresponding interest or duty.

The law recognizes such a privilege. In the operation of a business it is necessary at times for persons connected with that business to communicate to other persons connected with the business in the protection of its interests. The law says such communications shall be privileged under certain conditions, and those conditions are as follows (1) the publication must have been made in good faith, (2) that they are reasonably necessary to the operation of the business, (3) that they are only communications to that person or those persons to whom the knowledge and the information is reasonably required for the protection of the business, or if *some* else other than those in that category do seek the information that every reasonably careful effort has been made by the person doing the communicating that no one other than those that had the duty or interest with respect to the defamatory matter had access to such defamatory matter or visible to



them. Of course if such publication has been made maliciously the privilege does not exist but the burden rests on the plaintiff to show malice in such a case.

You have heard the testimony in this case. Whether or not the defendant is entitled to this claim of privilege or defense of privilege, is a matter of fact for you to determine in this case under the rules I have given [141] to you and all the circumstances surrounding the case.

There has been testimony that the pictures were secured from the Spokane Retail Trade Bureau, a branch of the Spokane Chamber of Commerce, and by them from the police department. You will consider that fact only in connection with this defendant and only in connection with the question as to whether or not what was done was done in good faith. The corporation is liable for any defamatory matter published by its agents or employees in the scope of their employment.

If you find the plaintiff is entitled to recover in this case, in deciding the amount of plaintiff's actual or compensatory damages, if you believe from the evidence the plaintiff has been damaged by the defendant you may take into consideration the extent of the circulation given to the picture, that is to say, the number of people to whom it was exhibited, or accessible, and to whom it was visible, and the length of time it was visible. You may take into consideration any grief, or agony, mental

suffering, mortification and humiliation, if any, the plaintiff has undergone. In this connection you may consider the mental suffering sustained by the plaintiff by reason of his wife and children, not as to the effect of the defamatory matter upon them but as to the effect upon him. If you believe from the evidence that the plaintiff's reputation was injured and that he did suffer grief and anguish, mental suffering, mortification or humiliation, then you may award the plaintiff an amount that will fairly compensate [142] him for the damages, if any, he has sustained, or that damage, if any, he may be reasonably certain to sustain in the future, not exceeding the sum sued for in the complaint, \$50,000. This amount must be such as to compensate plaintiff, and not for the purpose of punishing the defendant or making an example of the defendant, and you *must permit* sympathy or prejudice to have any part in deciding this case, or deciding the amount, if any, of the compensation.

When you shall have retired to your juryroom you will take with you the pleadings in the case, and this one exhibit. You will elect one member of the jury as foreman who will preside over your deliberations as a jury, and who will represent you in the further conduct of this case in Court. You will also take with you two forms of verdict, one reading 'We the jury in the above entitled cause find for the plaintiff in the sum of (blank) dollars.' When you have ascertained the amount that amount

will be inserted in the blank space and that verdict then signed by your foreman. The other form reads 'We, the Jury in the above entitled cause find for the defendant'. If that is your verdict then your foreman will sign that verdict. It will require the concurrence of the entire jury in order to arrive at a verdict. When you have arrived at your verdict you will return it properly signed into court in the presence of the entire jury.

(To Counsel): Are there any questions?

Mr. Swerland: Yes, your Honor, I have [143] certain exceptions.

The Court: Under the procedure in this court Counsel for either side have a right to make any suggestions, and they have to do that prior to the time the jury retires to consider of its verdict. The jury will retire to the juryroom but you are not retiring for the purpose of considering your verdict. You will be called back in a few minutes and then you will retire for that purpose.

Whereupon, the jury having retired the following proceedings were had.

Mr. Swerland: The Court having instructed the jury, and the jury not having retired to consider its verdict the plaintiff now excepts to the refusal of the Court to give its requested instruction No. 3.

The Court: What one is that?

Mr. Swerland: That's the one on the law on libel per se——

The Court: I gave all of it that I thought you

were entitled to on it. The first instruction I gave I left out 'defined by Remington's Revised Statutes of Washington, Section 2424'—that's the criminal statute.

Mr. Swerland: The one I had reference to is the right to recover damages is absolute where libel is deemed to be found.

The Court: I didn't give that because the Supreme Court has held to the contrary in *Wilson vs. the Publishing Company*. If you had used the term [144] 'nominal' damages. I didn't think you would want me to insert the word 'nominal' before the word 'damages' so I left it out entirely.

Mr. Swerland: Plaintiff excepts to the refusal of the Court to give requested instruction No. 4.

The Court: Exception allowed to the refusal to give instruction No. 3 for the reason I have stated.

Mr. Swerland: With respect to instruction No. 4 plaintiff expressly excepts on the ground that the requested instruction is a correct statement of the law and there has been evidence introduced on that question indicating the length of time.

The Court: I gave it. I inserted it in the later instructions as to damages, about the length of time and extent of circulation.

Mr. Swerland: Then plaintiff withdraws that exception.

The plaintiff expressly excepts to the refusal of the Court to give requested instruction No. 5 upon the ground this represents a correct statement of

the law, and the fact that the defendant might have received the libel from some other person is no excuse or justification. We think, your Honor, that is a very important element in the case.

The Court: Exception allowed.

Mr. Swerland: Plaintiff excepts to the refusal of the Court to give requested instruction No. 9 upon the ground this represents a statement of the law. [145]

The Court: Exception allowed.

Mr. Swerland: Plaintiff further excepts to the refusal of the court to give its requested instruction No. 13 upon the ground that it represents the statement of the law, and the proof of justification in a defense to libel must be as broad as the charges, and the charges in this case being that the plaintiff was a check artist and a forger, and had been guilty of the crime of forgery.

The Court: Exception allowed. I don't think it went that far.

Mr. Swerland: With respect to requested instruction No. 14 the plaintiff expressly excepts upon the ground this represents a correct statement of the law and that good faith is not an element in this case.

The Court: Exception allowed.

Mr. Swerland: That is all.

Mr. Edge: There is one matter that occurred to me as being somewhat serious. In my answer I was very careful not to deny he was innocent, but



maybe under the rule that's the construction. I simply alleged we didn't know—had no information, but did not go on and say 'therefore denies'. We simply said we had no information. I was very careful to keep that out. I didn't want to be in the position before the jury of trying to convict this plaintiff, because I had serious doubts the man was guilty, although there [146] were some circumstances.

The Court: But you argued all around the question of whether or not he was guilty and I had to present the matter to the jury as to the burden in the case, so I just took your allegation even though on information and belief and presented it as a defense for you then told you you had the burden of proving it.

Mr. Edge: Well, I am simply presenting it.

The Court: Exception allowed.

Mr. Edge: We proposed instruction No. 7—  
“You are instructed that the defendant in this case was required to exercise reasonable care to prevent said photograph from being exhibited to those not entitled to see it; and if you believe from the evidence that the defendant did exercise reasonable care not to improperly exhibit said photograph to the public, then your verdict should be for the defendant.”

I don't know if your Honor covered that in your instruction.

(Discussion.)



The Court: I will allow you an exception for not having given proposed instruction No. 7. I think I touched it.

Mr. Edge: I think so in a way. I think that's all I had in mind.

Whereupon the Jury was recalled, bailiffs sworn, and jury again retired to consider their verdict.

[147]

[Endorsed]: Filed April 22, 1944. Paul P. O'Brien, Clerk. [24]

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In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision

No. 296

MARVIN S. NICHOLS,

Plaintiff,

vs.

J. J. NEWBERRY COMPANY,

Defendant.

PLAINTIFF'S REQUESTED INSTRUCTIONS

[148]

Instruction No. 1

This is an action to recover damages for the publication of an alleged libel. "Libel" is defined by Remington's Revised Statutes of Washington, Sec-

tion 2424 as consisting of "every malicious publication by writing, printing, picture, effigy, sign or otherwise, then by mere speech, which shall tend to expose any living person to hatred, contempt, ridicule, obloquy, or deprive him of the benefit of public confidence or social intercourse." I instruct you that the photograph of plaintiff which has been exhibited to you is libelous on its face, if false, and the same was unprivileged. The defamatory matter complained of in this case being libelous if you find that it was also unprivileged, the right of the plaintiff to recover damages by reason of its publication is absolute, if you find that the publication complained of was false. The questions therefore for you to determine are whether the defamatory matter was true or false and unprivileged and if false the amount of damages to which under all the circumstances shown by the evidence the plaintiff is entitled. [149]

#### Instruction No. 2

When a publication is libelous on its face or per se, that is, in itself, the publication is presumed to be false; that is, the plaintiff is not required to show that it was false, but the law places upon the defendant, that is, the person or corporation making the publication, the burden of alleging and proving that the defamatory statements contained in the publication were true. If you find that the defendant has failed to sustain its burden of proving that the defamatory matter contained in the publication were true, then you must find for the plaintiff. [150]

## Instruction No. 3

You are instructed that you must distinguish between the evidence which has been introduced by the defendant for the purpose of establishing the truth of the publication and that which was introduced by the defendant for the purposes only of mitigating or lessening the damages. You are instructed that where a publication of the character of that complained of by the plaintiff is falsely made, the right of the plaintiff to recover damages by reason of such publication is absolute and the only question which remains for the jury to determine, if they find the defamatory matter, or any part thereof, pertaining to plaintiff to be false, is the amount of damages to which under all of the circumstances shown by the evidence the plaintiff is entitled. [151]

## Instruction No. 4

In considering the damages plaintiff may have sustained, you may take into consideration the length of time and consequent extent of the circulation that may have been given to the publication. You may also consider whether defendant took any means to ascertain whether the defamatory matter it exhibited was true or false. [152]

## Instruction No. 5

I further instruct you that if you find that the defendant has failed to sustain its burden of proving that the defamatory matter complained of was true, then you must find for the plaintiff and the fact that defendant may have received the defama-

tory matter from some other person or agency does not excuse or relieve defendant from liability.

Phillips v. Union Indemnity Co., 82 F. (2d)  
154. [153]

Instruction No. 6

It is presumed that the plaintiff at the time of the publication of the defamatory matter complained of in this action enjoyed a good name and reputation as a citizen of the community and prior to said time had always conducted and demeaned himself with honesty and integrity.

Luna De La Peunte v. Seattle Times Co.,  
186 Wash. 626. [154]

Instruction No. 7

I further instruct you that it is not necessary that the publication be made known to the public generally. It is sufficient if the publication was made known to a single person. It is furthermore sufficient if persons unacquainted with the plaintiff understood the publication to refer to plaintiff. I further instruct you that even though certain persons having heard of the defamatory matter may not have believed it, that nevertheless you may consider in assessing your damages the mental suffering, shame, mortification and humiliation of plaintiff. [155]

Instruction No. 8

I instruct you that in order for the defamatory matter to be privileged, the party making it must be careful to go no farther than its interests or duties require, and that if you find that the defamatory

matter complained of was exhibited or visible or accessible to persons who would have no duties or interest with respect thereto, then I instruct you that there is no privilege whatsoever, and you must find for the plaintiff.

Beardsley vs. Tappan, 77 U. W. 427

Lathrop vs. Sundberg, 55 Wash. 144

36 Corpus Juris P. 1243 [156]

#### Instruction No. 9

I further instruct you that one who publishes defamatory matter is liable for the injurious consequences of the repetition thereof by third persons where such repetition is the natural and probable result of the original publication.

33 Amer. Juris 197 P. 185 [157]

#### Instruction No. 10

I further instruct you that a corporation is liable for defamatory matter published by their agents and employees in the scope of their employment.

Ecuyer vs. New York Life, 107 Wash. 411

[158]

#### Instruction No. 11

You are instructed that if you find that the defamatory matter complained of was untrue, nevertheless, if you also find from the evidence that the said defamatory matter was published without malice on the part of defendant, but in good faith, believing it to be true, then in that case your verdict should be confined to the actual damages sustained by plaintiff, because in this state malice is not an



essential element of civil libel and plaintiff may obtain a recovery even though defendant may have acted in good faith.

Wilson vs. Sun Pub. Co., 85 Wash. 503 [159]

Instruction No. 12

I instruct you further that a libel must be communicated to someone other than the person defamed. This element of communication is given the technical name of "publication" but this does not mean it must be written or printed. It may be conveyed by the exhibition of a picture and a photograph is nevertheless libelous even though it does not contain the name of the plaintiff thereon.

Peck vs. Tribune, 214 U.S. 185

Louka v. Park Entertainments, 294 Mass 268  
[160]

Instruction No. 13

I instruct you further that the defendant has the burden of proving the defamatory matter true and that this proof must be as broad as the charge; that is to say, in this case, the defamatory matter complained of charges the plaintiff with having committed the crime of forgery. The defendant, therefore, in order to sustain its burden of proving the libel true must prove that the plaintiff was convicted of the crime charged. It is for you to say whether the defendant has sustained this burden of proof.

103 Kansas 192, 173 Pac. 414,

LRA 1918 F. 153 [161]



## Instruction No. 14

I instruct you further that it is no defense that the defendant may have published the libel complained of in good faith or in the absence of malice, nor may good faith on the part of the defendant or the absence of malice be considered by you in mitigation of damages.

33 Am. Juris. §272 P. 256

Wigmore on Evidence §74, 90 ALR 1169

[162]

## Instruction No. 15

In estimating the amount of plaintiff's actual or compensatory damages, if you believe from the evidence that the plaintiff has been damaged by the defamatory matter complained of in this case, you may take into consideration the extent of the circulation given to this libel, that is to say, the number of people to whom it was exhibited or accessible and to whom it was visible. You may take into consideration the grief, anguish, mental suffering, mortification and humiliation which the plaintiff has undergone and suffered by reason of the defamatory matter. In this connection you may consider the mental suffering sustained by plaintiff by reason of his wife and children due to the defamatory matter complained of, not as to the effect of the defamatory matter upon them, but as to the effect upon him. If you believe from the evidence that his good name and reputation were injured and that he did suffer grief, anguish, mental suffering, mortification or humiliation, then you may award the plaintiff such compensatory or actual damages as you find from

the evidence plaintiff has suffered, or that it is reasonably certain he will suffer in the future by reason of said publication, not exceeding the amount prayed for in the complaint, to wit: \$50,000.00.

[Endorsed]: Filed June 22, 1943. [163]

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[Title of District Court and Cause.]

**VERDICT**

We, the Jury in the Above Entitled Case, find for the Defendant.

D. D. HAWORTH,  
Foreman.

[Endorsed]: Filed. June 22, 1943. [165]

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In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division

No. 296

MARVIN S. NICHOLS,

Plaintiff,

vs.

J. J. NEWBERRY COMPANY,

Defendant.

**JUDGMENT**

This cause came regularly on for trial June 21st, 1943, before the Court and a jury, plaintiff appearing in person and by his attorney, Bernard L. Swer-

land, the defendant appearing by Edge, Davenport, Keith & dePender, its attorneys; and the Court having heard the evidence in said cause, instructed the jury and submitted the case to the jury for its consideration, and the jury thereafter returned into court and returned a verdict in favor of the defendant,

Now, Therefore, upon motion of the defendant for judgment in accordance with the verdict of the jury, and the Court being fully advised in the law in the premises,

It Is Ordered, Adjudged and Decreed That plaintiff take nothing by this action, and judgment is hereby entered in favor of the defendant and against the plaintiff, and for its costs and disbursements herein, to be taxed at \$68.20.

Approved, Clerk is directed to enter.

Done in Open Court this 28 day of June, 1943.

L. B. SCHWELLENBACH  
Judge.

Notice of Presentment waived and approved as to form. Copy received Jun 25 1943.

BERNARD L. SWERLAND  
Attorney for Plff.  
Presented by Lester Edge

[Endorsed]: Filed. June 28, 1943. [166]

[Title of District Court and Cause.]

MOTION TO SET ASIDE VERDICT AND  
JUDGMENT ENTERED THEREON AND  
TO ENTER JUDGMENT IN FAVOR OF  
PLAINTIFF

Comes now the above named plaintiff and moves the Court to set aside the verdict of the jury rendered herein, and the judgment entered thereon in favor of the defendant and against the plaintiff, and to enter judgment for the plaintiff notwithstanding the said verdict.

This motion is based on the records and files herein and upon the following grounds herein:

I.

That the said verdict for the defendant is contrary to law.

II.

That the said verdict for the defendant is contrary to the evidence and there is no evidence or reasonable inference from the evidence to justify the verdict.

III.

That the said verdict is contrary to the law and the evidence.

IV.

That the court erred in failing to hold that under the evidence defendant had no privilege, as a matter of law.

BERNARD L. SWERLAND

Attorney for Plaintiff

Copy Received this 2nd day of July, 194...

EDGE, DAVENPORT, KEITY  
& dePENDER

Attorney for Defendant.

[Endorsed]: Filed July 2, 1943. [167]

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

In the event that the motion of plaintiff to set aside the verdict and judgment entered thereon in favor of defendant and to enter judgment notwithstanding said verdict in favor of plaintiff is denied, but not other wise, plaintiff herein moves the Court for an order granting him a new trial.

This motion is based upon the pleadings and papers on file in the above entitled action and upon the minutes of the Court, and for the following causes and upon the following grounds materially effecting the substantial rights of plaintiff:

I. That there is no evidence or reasonable inference from the evidence to justify the verdict in favor of the defendant, and that the verdict for the defendant is contrary to law.

II. That there is no evidence or reasonable inference from the evidence to sustain defendant's alleged affirmative defense of privilege, and that the verdict for the defendant is contrary to law.



III. Error in law occurring at the trial due to the Court refusing to hold, as a matter of law, that the defendant had no privilege.

IV. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 3.

V. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 4.

VI. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 5.

[168]

VII. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 8.

VIII. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 9.

IX. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 11.

X. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 13.

XI. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 14.

BERNARD L. SWERLAND

Attorney for Plaintiff.

Copy received this 2nd day of July, 194...

EDGE, DAVENPORT, KEITH  
& de PENDER

Attorney for Defendant

[Endorsed]: Filed July 2, 1943. [169]



(Copy)

October 7, 1943

Lester Edge, Esquire  
Paulsen Building  
Bernard Swerland, Esquire  
Old National Bank Building

Re: Nichols v. The Newberry Co.  
Civ. 296

Gentlemen:

The motion for new trial is denied. The problem involved in this action is discussed on pages 12 to 17 inclusive of my opinion in Holden v. American News Company, filed this day. I am convinced that the distinction therein made covers the problem presented by the motion in this case.

Yours truly,

L. B. SCHWELLENBACH

LBS/em [170]

In the District Court of the United States for the  
Eastern District of Washington, Northern Division

No. 323

ASHLEY HOLDEN,

Plaintiff,

v.

AMERICAN NEWS COMPANY, and  
C. A. HAWKSLEY,

Defendants.

OPINION OF THE COURT

Edge, Davenport, Keith & dePender,  
Spokane, Washington

John T. Raftis,  
Colville, Washington  
Attorneys for Plaintiff.

Thomas A. E. Lally,  
Spokane, Washington  
Attorney for Defendants.

Schwellenbach,  
District Judge.

\* \* \* \* \*

The most troublesome problem in this case is raised by defendants' contention that plaintiff's failure to prove malice in the publication of this article by these defendants requires the dismissal of this action. Where no question of privilege is involved, [171] the proof of malice is unnecessary. Wilson v. Sun Publishing Company, 85 Wash. 503,

515; McKillip v. Grays Harbor Publishing Company, 100 Wash. 657; Hollenbeck v. Post-Intelligencer Company, 162 Wash. 14, 18; Ziebell v. Lumbermens Printing Company, 14 Wash. (2d) 261, 266. However, each defendant pleaded affirmatively that the plaintiff and Albi "placed themselves in the public eye and made themselves and their acts the objects for fair editorial comment and criticism and that the article involved is composed of facts, background and fair editorial criticism." In Fahey v. Shafer, 98 Wash. 517, 522, the State Supreme Court said: "In this state malice is not ordinarily an essential element in a civil action for damages for libel or slander \* \* \*. But this is not true in cases involving the qualified privilege. In such cases, actual malice must be proved before there can be a recovery. This follows from the very nature of the privilege, which in itself is a complete defense in the absence of malice. The burden in such cases is upon the plaintiff to prove the existence of malice. \* \* \* Whether a statement, if made in good faith and without malice, is privileged is a question for the court. But if there is any evidence reasonably tending to show actual malice, the plaintiff has the right, notwithstanding the privileged character of the communication, to have the question of malicious excess of privilege submitted to the jury upon such evidence. \* \* \* Where the qualified privilege exists and the court can see that the language used will warrant no inference of malice, and there is no other proof of malice, it is the duty of the court to grant a non-


suit.” This doctrine was affirmed in the later case of *Ecuyer v. New York Life Insurance Company*, 101 Wash. 247, 256, with the restrictions that “whether bona fides existed in the statement made or whether it was malicious is usually a question of fact for the jury \* \* \*. This the jury must determine from the language itself and the surrounding circumstances.” The difficulty in the problem evolves from the use in *Graham v. Star Pub. Co.*, 133 Wash. 387, of this language: “The privilege ends when falsity begins and if, as the complaint alleges, the charge is false, the privilege, if there was one, was, therefore, exceeded.” It takes but casual analysis [172] to appreciate the sharp conflict between these two holdings. In Washington, the doctrine that truth constitutes a complete defense has been recognized since *Haynes v. The Spokane Chronicle Publishing Company*, 11 Wash. 503. Since truth is a complete defense, resort to the defense of privilege only becomes necessary when falsity is involved. It necessarily follows, therefore, that if *Graham v. The Star Pub. Co.*, supra, correctly states the rule, the defense of qualified privilege is, for all practical purposes, abolished in this state. The language of *Graham v. Star Pub. Co.*, supra, is broad enough to justify the conclusion that the rule applies to absolute privilege as well. This conflict between the two rules makes necessary an examination of later cases. There only are three cases in which the question arose. In *Hollenbeck v. Post-Intelligencer Company*, 162 Wash. 14, 19, the *Star Publishing Company* case



was cited and the language "the privilege ends when falsity begins" was repeated. In *Miles v. Louis Wasmer, Inc.*, 172 Wash. 466, 469, both cases are cited and both rules are stated and the court used the following language: "Defamatory words spoken of a person, which in themselves prejudice him in his profession, trade, vocation or office, are slanderous and actionable *per se* unless they are held true or privileged. 36 C. J. 1165; *Ecuyer v. New York Life Insurance Company*, 101 Wash. 247, 172 Pac. 359." (Emphasis mine.) In the very next paragraph, the following language is used: "Words spoken, however, which are not in fact true, are not privileged, because, as stated in *Graham v. Star Pub. Co.*, 133 Wash. 387, 233 Pac. 625, 'The privilege ends when falsity begins, and, if, as the complaint alleges, the charge is false, the privilege, if there was one, was therefore exceeded.'" However, between the apparently irreconcilable language just quoted, the following appears: "Words spoken concerning matters of public interest, such as matters concerning the administration of government, matters relating to the management of public institutions and local authorities and matters pertaining to the administration of public justice, are within the rule of qualified privilege, *if true*." (Emphasis mine.) In *Fahey [173] v. Shafer*, supra, and *Ecuyer v. New York Life Insurance Company*, supra, the privilege claimed was that defined by Newell, *Slander and Libel*, 2d ed. p. 391, as concerning a communication "made touching a matter in which the party making it has an interest to an-

other having a corresponding interest." In the Fahey case, the parties were business rivals and the statements involved were made to the Seattle Ad Club and to certain wholesale clothing manufacturers. In the Ecuyer case, the statements were made concerning plaintiff's alleged defalcations to the plaintiff's father and to individuals and firms with whom plaintiff had made application for employment. On the other hand, the publication involved in *Graham v. Star Publishing Company* concerned the official conduct of the plaintiff who was a member of the Seattle Police Department. The broadcast involved in *Miles v. Wasmer, Inc., supra*, was by a radio commentator who was discussing the question of prohibition. In the opinion of *Hollenbeck v. Post-Intelligencer Company, supra*, the court did not reach the question as to whether privilege actually was involved. The case was considered by the Supreme Court on the basis of the demurrer which had been sustained by the trial court to the plaintiff's complaint.

From the foregoing, it is possible to reconcile the apparently irreconcilable positions taken by the Washington court; this, despite the fact that that court itself has never attempted so to do. In those cases arising out of communications where the privilege claimed is based upon the fact that the communication is "made touching a matter in which the party making it has an interest to another having a corresponding interest", the falsity of what is spoken or written does not destroy the qualified priv-





ilege in the absence of malice. In those cases, the rule enunciated in *Ecuyer v. New York Life Insurance Company*, *supra*, controls. In cases where the words spoken or written concern "matters of public interest, such as matters concerning the administration of Government, matters relating to the [174] management of public institutions and local authorities and matters pertaining to the administration of public justice", the helping hand of the qualified privilege is only given to those whose words or writings are true. In those instances, the rules in *Graham v. Star Pub. Co.*, *supra*, and *Miles v. Louis Wasmer, Inc.*, *supra*, control. Since the defendants here seek the protection of the latter type of privilege, the issue of malice was not involved in this case. The jury found the article to be false. Consequently, whether malice existed was immaterial.

Such a distinction is required if there is to be any recognition of the defense of privilege in the law of Washington. If the language of *Graham v. Star Pub. Co.*, *supra*, is taken literally, no one in this state would dare even to report court proceedings or the activities of any legislative body. The phrase, "The privilege ends when falsity begins" is attractive but dangerous because of its very attractiveness. It is, as Mr. Justice Frankfurter said in *Tiller v. Atlantic Coast Line R. Co.*, 318 U. S. 54, 68, "an excellent illustration of the extent to which uncritical use of words bedevils the law. A phrase begins life as a literary expression; \* \* \* and repetition soon establishes it as a legal formula,

undiscriminatingly used to express difficult and sometimes contradictory ideas." This construction and distinction is in line with the rule in the great majority of states. See Note 110 A. L. R. 412. The reason for the distinction is best outlined by Judge (later Mr. Justice) Holmes in *Burt v. Advertiser Newspaper Co.*, 154 Mass. 238, 28 N. E. 1, as follows:

"But there is an important distinction to be noticed between the so called privilege of fair criticism upon matters of public interest, and the privilege existing in the case, for instance, of answers to inquiries about the character of a servant. In the latter case, a bona fide statement not in excess of the occasion is privileged, although it turns out to be false. In the former, what is privileged, if that is the proper term, is criticism, not statement, and however it might be if a person merely quoted or referred to a statement as made by others and gave it no new sanction, if he takes upon himself in his own person to allege facts otherwise libellous, he will not be privileged if those facts are [175] not true. The reason for the distinction lies in the different nature and degree of the exigency and of the damage in the two cases. In these, as in many other instances, the law has to draw a line between conflicting interests, both intrinsically meritorious. When private inquiries are made about a private person, a servant, for example, it is often impossible to answer them properly without stating

facts, and those who settled the law thought it more important to preserve a reasonable freedom in giving necessary information than to insure people against occasional unintended injustice, confined as it generally is to one or two persons. But what the interest of private citizens in public matters requires is freedom of discussion rather than of statement. Moreover, the statements about such matters which come before the courts are generally public statements, where the harm done by a falsehood is much greater than in the other case. If one private citizen wrote to another that a high official had taken a bribe, no one would think good faith a sufficient answer to an action. He stands no better, certainly, when he publishes his writing to the world through a newspaper, and the newspaper itself stands no better than the writer."

The same distinction was made by Chief Justice Taft when he was a Circuit Judge and wrote the opinion in *Post Publishing Co. v. Hallam*, 59 F. 530. He said:

"The existence and extent of privilege in communications are determined by balancing the needs and good of society against the right of an individual to enjoy a good reputation when he has done nothing which ought to injure it. The privilege should always cease where the sacrifice of the individual right becomes so great that the public good to be de-

rived from it is outweighed. Where conditional privilege is extended to cover a statement of disgraceful fact to a master concerning a servant or one applying for service, the privilege covers a bona fide statement, on reasonable ground, to the master only, and the injury done to the servant's reputation is with the master only. This is the extent of the sacrifice which the rule compels the servant to suffer in what was thought to be, when the rule became law, a most important interest of society. But, if the privilege is to extend to cases like that at bar, then a man who offers himself as a candidate must submit uncomplainingly to the loss of his reputation, not with a single person or a small class of persons, but with every member of the public, whenever an untrue charge of disgraceful conduct is made against him, if only his accuser honestly believes the charge upon reasonable ground. We think that not only is such a sacrifice not required of every one who consents to become a candidate for office, but that to sanction such a doctrine would do the public more harm than good." [176]

[Title of District Court and Cause.]

ORDER ON MOTION TO SET ASIDE VER-  
DICT AND FOR JUDGMENT FOR PLAIN-  
TIF N.O.V. AND MOTION FOR A NEW  
TRIAL

The above matter came on for hearing on the motion of plaintiff to set aside the verdict and judgment and entered thereon and to enter judgment in favor of plaintiff and on motion of plaintiff for a new trial.

The Court heard said motions and argument thereon and being fully advised in the premises,

It Is Ordered that said motion to set aside verdict and judgment entered thereon and to enter judgment in favor of the plaintiff be and the same is hereby denied, and the motion of plaintiff for a new trial be and the same is hereby denied.

Plaintiff excepts, exception allowed.

Done in Open Court this 19 day of October, 1943.

L. B. SCHWELLENBACH,  
Judge.

Copy received and notice of presentation waived this 18 day of October, 1943.

BERNARD L. SWERLAND,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 19, 1943. [177]



[Title of District Court and Cause.]

NOTICE OF APPEAL

To J. J. Newberry Company, defendant above named, and to Edge, Keith and DePender, your attorneys of record:

Notice is hereby given that Marvin S. Nichols, plaintiff in the above entitled action hereby appeals to the Circuit Court of Appeals for the Ninth Circuit, from the final judgment entered in this action, which said judgment was entered by the Court and filed therein on June 28, 1943, and from the order denying plaintiff's motion to set aside the verdict and enter judgment for the plaintiff non obstante verdicto, and motion for new trial which said order was entered on October 19, 1943.

Dated this 24th day of December, 1943.

BERNARD L. SWERLAND,  
Attorney for Plaintiff and Appellant, Marvin S. Nichols.  
Address: 1208 Old National  
Bank Bldg.,  
Spokane, Washington.

Copy of the above Notice mailed to Lester P. Edge, December 24th, 1943.

A. A. LaFRAMBOISE,  
Clerk, United States District Court, Eastern District of Washington.

[Endorsed]: Filed Dec. 24, 1943. [178]



United States Fidelity and Guaranty Company  
Baltimore, Maryland

No. 76 706

\$250.00

[Title of District Court and Cause.]

### BOND ON APPEAL

Know All Men By These Presents, That we, Marvin S. Nichols, an individual, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of Surety in the State of Washington, as Surety, are held and firmly bound unto J. J. Newberry Company, a corporation, the defendant above named in the just and full sum of Two Hundred Fifty and No/100ths Dollars (\$250.00) good and lawful money of the United States of America, well and truly to be paid, and for the true payment of which we hereby bind ourselves, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 24th day of December, A. D. 1943.

The Condition of the Above Obligation Is Such That, Whereas the above named Marvin S. Nichols, Plaintiff, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of June 28, 1943, in favor of the defendant and against the plaintiff for costs in the amount of Sixty-Eight and 20/100ths Dollars (\$68.20); and from the order denying motion to set aside verdict and to enter judgment for plaintiff n.o.v. and deny-

ing motion for new trial, dated October 19, 1943;  
and

Whereas, the above named principal has heretofore given due and proper notice that he will appeal from said judgment and orders of the District Court of the United States for the Eastern District of Wasihngton, [179] Northern Division;

Now, if the said principal shall pay to J. J. Newberry Company, the defendant above named, all costs and damages that may be awarded against him on the appeal, or on the dismissal thereof, not exceeding Two Hundred Fifty and No/100ths Dollars (\$250.00), then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

MARVIN S. NICHOLS,

Principal,

[Seal]

UNITED STATES FIDELITY  
AND GUARANTY COM-  
PANY,

By M. FREELAND,

Attorney-in-Fact.

From the Office of

Old National Insurance Agency, Inc.

1124 Old National Bldg.

Spokane.

[Endorsed]: Filed Dec. 24, 1943. [180]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL UPON  
WHICH APPELLANT INTENDS TO  
RELY UPON THE APPEAL

Comes now Marvin S. Nichols by his Attorney, Bernard L. Swerland, and makes the following Statement of Points upon which he intends to rely in the appeal from the judgment entered in the above-entitled action:

1. That the said verdict for the defendant is contrary to law.

2. That the said verdict for the defendant is contrary to the evidence and there is no evidence or reasonable inference from the evidence to justify the verdict.

3. That the said verdict is contrary to the law and the evidence.

4. That the court erred in failing to hold that under the evidence defendant had no privilege, as a matter of law.

5. That there is no evidence or reasonable inference from the evidence to justify the verdict in favor of the defendant, and that the verdict for the defendant is contrary to law.

6. That there is no evidence or reasonable inference from the evidence to sustain defendant's alleged affirmative defense of privilege, and that the verdict for the defendant is contrary to law.

7. Error in law occurring at the trial due to the Court refusing to hold, as a matter of law, that the defendant had no privilege.

8. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 3.

9. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 4. [181]

10. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 5.

11. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 8.

12. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 9.

13. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 11.

14. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 13.

15. Error in law occurring at the trial in refusing to give plaintiff's requested Instruction No. 14.

16. Error in law occurring at the trial due to the Court holding and instructing the jury that plaintiff was required to prove malice on the part of defendant in order to recover.

BERNARD L. SWERLAND,

Attorney for plaintiff and appellant.

1208 Old National Bank Bldg.  
Spokane, Washington.

Copy received December 27, 1943.

EDGE, DAVENPORT, KEITH  
& dePENDER,

Attorneys for defendant-appellee.

[Endorsed]: Filed Dec. 27, 1943. [182]

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME  
FOR FILING RECORD ON APPEAL

Comes now the above named plaintiff and respectfully moves the Court for an Order extending the time for filing the record on appeal and docketing the action.

This Motion is based upon the records and files herein, the notice of appeal dated December 24, 1943, and the affidavit of Bernard L. Swerland, annexed hereto.

BERNARD L. SWERLAND,  
Attorney for Plaintiff.

State of Washington,  
County of Spokane—ss.

Bernard L. Swerland, having been first duly sworn deposes and says:

That he is the attorney for the plaintiff in the above entitled action; that heretofore and on the 24th day of December, 1943, a Notice of Appeal was served and filed in the United States District Court, Eastern District of Washington, appealing to the Circuit Court of Appeals, Ninth Circuit, from the final judgment entered in this action; that promptly thereafter affiant directed Mrs. J. J. Cole, the reporter who transcribed the testimony at the trial of this action, to prepare the minutes thereof. Deponent has been informed, however, that due to the fact that the said Mrs. Cole was engaged in transcribing the testimony of prior actions and the



recent death of an immediate member of her family she has been unable [183] to complete the transcription of the testimony of the trial in the above entitled action.

Deponent respectfully submits that the period of forty days from the date of the Notice of Appeal expires February 2nd, 1944, by which time the record on appeal in the above entitled matter is required to be filed in the office of the Clerk of the Circuit Court of Appeal, located in San Francisco, California.

Deponent respectfully prays therefore that the Court extend the time for the filing of the record on appeal and the docketing of said action to the 23rd day of March, 1944. That the within application has been made prior to the expiration of the forty days from the date of the notice of appeal, for all of which no previous application has been made.

BERNARD L. SWERLAND,

Subscribed and sworn to before me this 25th day of January, 1944.

[Seal] THOS. MALOTT,

Notary Public in and for the State of Washington,  
residing at Spokane.

[Endorsed]: Filed Jan. 27, 1944. [184]



[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING  
RECORD ON APPEAL

Plaintiff having filed his motion praying for an Order extending the time for filing the record on appeal and docketing the action, and the said motion having come on regularly for hearing before the Court, and the Court being fully advised in the premises, and due deliberation having been had;

It Is By the Court Ordered:

That the time for filing the record on appeal and docketing the action shall be, and the same hereby is, extended to the 23rd day of March, 1944.

Done in Open Court this 27th day of January, 1944.

L. B. SCHWELLENBACH,  
United States District Judge.

Presented by  
BERNARD L. SWERLAND,  
Attorney for Plaintiff.

Copy received and the foregoing Order is consented to.

EDGE, DAVENPORT, KEITH  
& dePENDER,  
Attorneys for Defendant.

[Endorsed]: Filed Jan. 27, 1944. [185]

[Title of District Court and Cause.]

APPLICATION FOR TRANSMISSION OF  
ORIGINAL EXHIBIT TO THE CIRCUIT  
COURT OF APPEALS

Comes now the plaintiff above named and moves the Court for an order providing for the safekeeping and transmission of the original exhibit listed below to the Circuit Court of Appeals for the Ninth Circuit on the ground that said exhibit cannot be conveniently or satisfactorily copied into the record and should be inspected by the Appellate Court.

This Motion is based on the files herein. The original exhibit referred to is:

Plaintiff's Exhibit "A".

BERNARD L. SWERLAND,  
Attorney for Plaintiff.

Copy Received this 6th day of March, 1944.

LESTER EDGE,  
Attorney for defendant.

[Endorsed]: Filed March 8, 1944. [186]

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[Title of District Court and Cause.]

ORDER PROVIDING FOR TRANSMISSION  
OF ORIGINAL EXHIBIT TO THE CIR-  
CUIT COURT OF APPEALS

This matter coming regularly on for hearing upon motion of the plaintiff for an order to transmit a certain exhibit to the Circuit Court of Appeals, and

it appearing to the Court that said exhibit cannot be conveniently or satisfactorily copied into the record and that the same should be inspected by the Appellate Court; now, therefore, it is

Ordered that the Clerk of this Court transmit the following original Exhibit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit as and when he transmits the transcript of the record on appeal herein. The original exhibit referred to is: Plaintiff's Exhibit "A".

Done in open Court this 8th day of March, 1944.

L. B. SCHWELLENBACH,

District Judge.

Presented by

Bernard L. Swerland.

Copy received and foregoing Order is consented to.

LESTER EDGE,

Attorney for defendant.

[Endorsed]: Filed March 8, 1944. [187]

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[Title of District Court and Cause.]

#### STIPULATION AS TO RECORD

Come now the parties above named, Marvin S. Nichols, plaintiff, by his attorney, Bernard L. Swerland, and the defendant, J. J. Newberry Company, a corporation, by its attorneys, Edge, Davenport, Keith & dePender, and hereby agree and stipulate

that the following parts of the record, proceedings and evidence shall be and are designated to be included in the record on appeal:

1. Plaintiff's amended complaint.
2. Defendant's answer to plaintiff's amended complaint.
3. Notice of defendant's trial amendment to answer.
4. Reporter's transcript of all testimony, evidence and proceedings at the trial, including rulings of the court on the admission and exclusion of testimony.
5. Plaintiff's requested instructions.
6. Jury's verdict.
7. Judgment on verdict.
8. Memorandum of costs and disbursements.
9. Plaintiff's motion to set aside verdict and judgment entered thereon and to enter judgment in favor of plaintiff.
10. Plaintiff's motion for new trial.
11. Order on motion to set aside verdict and judgment for plaintiff N.O.V. and motion for new trial.
12. Memorandum opinion of the trial court, consisting of letter of [188] judge of the trial court, addressed to respective counsel, dated October 7, 1943, and pages 12 to 17 of opinion of Honorable Lewis B. Schwollenbach, Judge of the United States District Court for the Eastern District of Washington, entered and filed in that certain cause entitled *Ashley Holden v. American News Company, et al.*, being cause No. 323 of the files of the Clerk of the

United States District Court for the Eastern District of Washington, to which said pages reference is made in the letter of the district Judge addressed to counsel, denying motion for new trial.

13. Notice of appeal.

14. Bond on appeal.

15. Stipulation designating matters to be included in the record.

16. Statement by appellant of the points on which he intends to rely.

17. Application to relieve parties from printing said exhibits in the record.

18. Order relieving parties from printing certain exhibits in the record.

19. Motion to extend time to file record on appeal.

20. Order extending time to file record on appeal.

21. Motion to amend amended complaint and record as to citizenship of plaintiff.

22. Order on motion to amend amended complaint and record as to citizenship of plaintiff.

Dated at Spokane, Washington, this 14th day of March, 1944.

BERNARD L. SWERLAND,  
Attorney for Plaintiff.

EDGE, DAVENPORT, KEITH  
& dePENDER,

By LESTER P. EDGE,  
Attorneys for Defendant.

[Endorsed]: Filed March 14, 1944. [189]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America,  
Eastern District of Washington—ss

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern Division of Washington, do hereby certify the foregoing type-written pages numbered from 1 to 189 inclusive, to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by the Stipulation as to Record, as the same remain on file and of record in the office of the Clerk of said District Court, and that the same constitutes the record on appeal of Marvin S. Nichols from the final judgment of the District Court of the United States for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, California.

I further certify that in accordance with order of the Court I herewith transmit Plaintiff's Original Exhibit "A".

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record amount to \$21.45 and that the same has been paid in full by Bernard L. Swerland, Attorney for the Appellants. [190]



In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid District Court, this 18th day of March, A. D. 1944.

[Seal]                      A. A. LaFRAMBOISE,  
Clerk, United States District Court, Eastern District of Washington. [191]

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[Endorsed]: No. 10709. United States Circuit Court of Appeals for the Ninth Circuit. Marvin S. Nichols, Appellant, vs. J. J. Newberry Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed March 21, 1944.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10709

MARVIN S. NICHOLS,

Appellant,

v.

J. J. NEWBERRY COMPANY, a corporation,  
Appellee.

STATEMENT OF POINTS AND  
DESIGNATION

Comes now the appellant above named and hereby formally adopts as his statement of points on which he intends to rely in the Appellate Court, the statement of points as filed in the trial court, said statement being included in the transcript as prepared by the clerk of the trial court and forwarded to the clerk of this court. Appellant likewise designates all rulings of the court made upon matters which occurred during the trial to which exception was noted by appellant and allowed by the court.

In support of the said points on which appellant intends to rely, the appellant designates that portion of the record to be printed which is designated in the "Stipulation as to Record" on file herein and excepts the following original exhibit, viz: Appellant's Exhibit "A" which said exhibit has been transmitted to this court in its original form and as to which exhibit appellant has made application to

the court for relief from printing the same in the record.

BERNARD L. SWERLAND,  
Attorney for Appellant.

Service of the within statement of points and designation is hereby admitted by receipt of a true copy this 14th day of March, 1944.

EDGE, DAVENPORT, KEITH  
& dePENDER,  
By LESTER EDGE,  
Attorneys for Appellee.

[Endorsed]: Filed March 21, 1944. Paul P.  
O'Brien, Clerk.

[Title of District Court and Cause.]

ORDER RELIEVING PARTIES FROM  
PRINTING CERTAIN EXHIBITS IN  
THE RECORD

It appearing from the files and records on file herein that appellant's Exhibit "A" cannot readily or satisfactorily be printed or reproduced in the printed record on appeal; now, therefore, it is

Ordered that said exhibit be omitted from the printed record.

It Is Further Ordered that said exhibit shall be considered by the Court in its original form as though set out in the printed record.

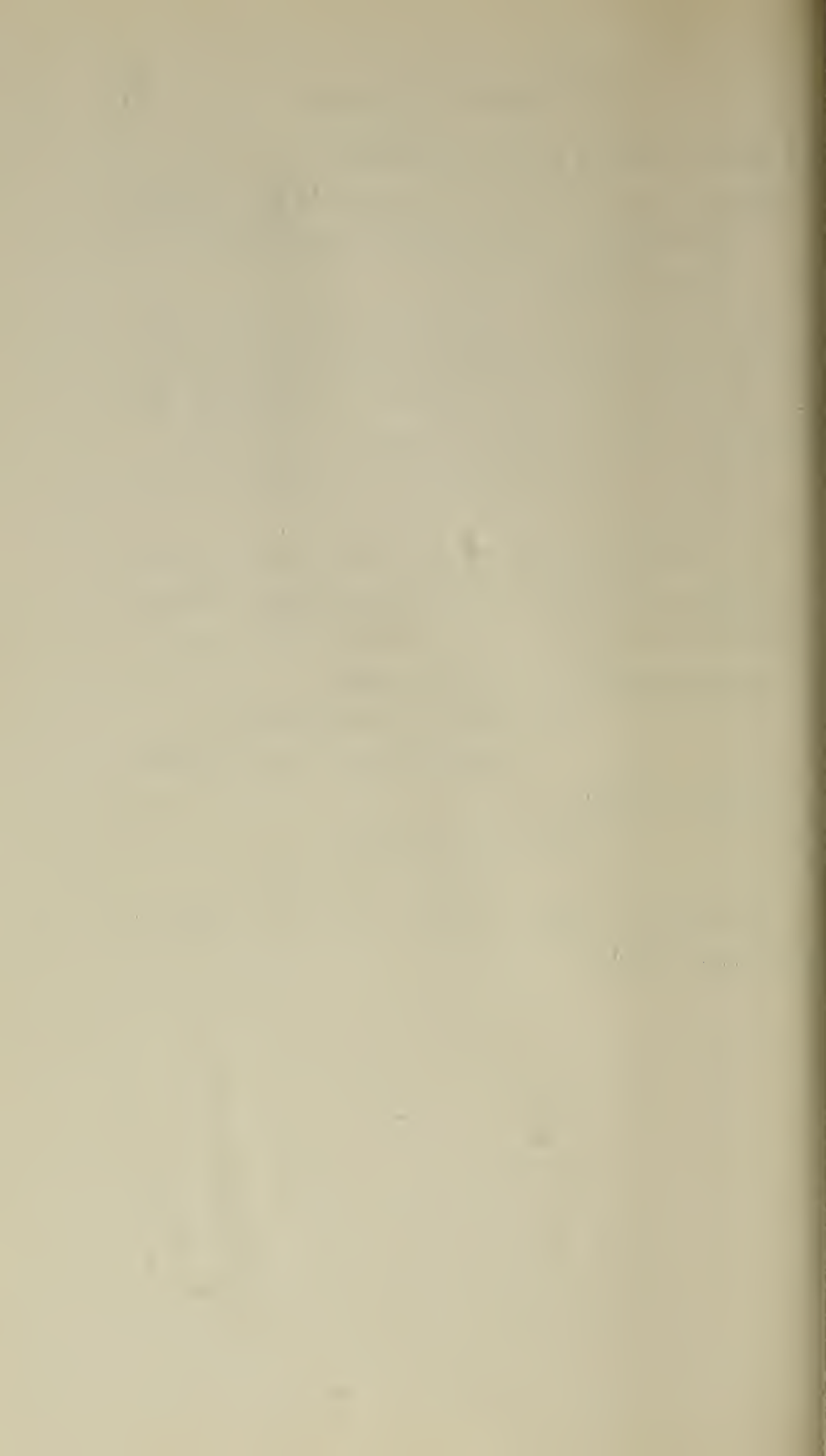
Dated this 21st day of March, 1944.

FRANCIS A. GARRECHT,  
United States Circuit Judge.

O. K. as form.

LESTER EDGE,  
Atty. for Appellee.

[Endorsed]: Filed March 21, 1944. Paul P.  
O'Brien, Clerk.



2 brief - no reply.  

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No. 10,709

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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MARVIN S. NICHOLS, *Appellant,*  
*vs.*

J. J. NEWBERRY COMPANY, a Corporation,  
*Appellee.*

---

BRIEF OF APPELLANT

*Upon Appeal from the District Court of the United  
States for the Eastern District of Washington  
Northern Division*

HONORABLE L. B. SCHWELLENBACH

*United States District Judge*

FILED

BERNARD L. SWERLAND

AUG 15 1944

1208 Old National Bank Building  
Spokane, Washington,  
*Attorney for Appellant.*

PAUL P. O'BRIEN,  
CLERK





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No. 10,709

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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MARVIN S. NICHOLS,

*Appellant,*

*vs.*

J. J. NEWBERRY COMPANY, a Corporation,  
*Appellee.*

---

PLEADINGS AND FACTS DISCLOSING BASIS  
FOR JURISDICTION

Appellant, a citizen of the State of Washington, instituted an action against defendant, a corporation foreign to the State of Washington.

Plaintiff alleged damage to his reputation and feelings as a result of the libelous publication by defendant and its agents of a photograph purporting to charge the plaintiff with being a "check artist."

Plaintiff prayed for judgment against defendant in the sum of \$50,000.

The cause was tried to the Court sitting with a jury,



and resulted in a verdict for defendant and an entry of a judgment of dismissal of plaintiff's action, and the assessment of the costs of trial against him.

Plaintiff appeals from said judgment of dismissal to this Court. The District Court had jurisdiction under Title 28 U. S. C. A. Section 41, 43 Stat. 972.

Pleadings necessary to show the existence of the jurisdiction are the amended complaint (R-2) and the answer to the amended complaint (R-9). Defendant's trial amendment of its answer (R-12, 14a) and the reply to the answer as read by the trial judge (R-14a).

### STATEMENT OF THE CASE

This is a libel suit in which plaintiff sought damages for the libelous publication of a photograph of plaintiff by defendant in which plaintiff is referred to as a "check artist."

Plaintiff is a married man with three children residing with them and his wife in the City of Spokane, Washington. He had resided in the City of Spokane for many years (R-30).

Defendant owns and operates as a part of a chain system, nation-wide in scope, a five and ten cent notion store in the City of Spokane, Washington, in which, at the time with which this action is concerned, an average of 60 girls per day were employed as clerks, and as many as 180 girls were employed during each holiday season (R-24, 25). The employee personnel was not constant

in defendant's store, but there was a rapid turnover of employees (R-23).

Defendant maintained in its store a restroom for employees. In this restroom a matron maintained a desk surrounded by a wire netting or screen, referred to as a cage and upon the cage the defendant had placed a large placard (Plf's. Ex. A) purporting to show the photographs of various forgers and other criminals. On this placard the plaintiff's picture appeared with a police number and caption, "check artist" (R-22, 23). This placard was placed in a portion of the ladies' restroom where it was in the view of every employee who came into the restroom or any other person, such as workmen, janitors or customers who might use the restroom.

This placard remained on exhibition in plaintiff's restroom from the spring of 1941 to September, 1942 (R-25, 26). / 2

Three of defendant's employees who testified in the case had personal acquaintance with the plaintiff and his family (R-14b, 20, 22).

Witness Frances Mohny (R-20) testified that she was an employee of defendant; that she saw plaintiff's picture under the caption, "check artist," and that because of seeing the picture displayed in the restroom of the defendant's store where she was employed, she believed that it was probably true that plaintiff was a "check artist."

Witness Jane Pierce (R-15) testified that she knew

the plaintiff, and that she saw his picture with the caption, "check artist," in the restroom of defendant's store where she was employed.

Witness Helen Coffee (R-22) testified that she was employed by defendant, that she saw the plaintiff's picture, and that she had been acquainted with plaintiff and his family and recognized the picture as being that of plaintiff.

Plaintiff proved that he had never been convicted of being a "check artist" or of any offense whatever. That he had at one time been arrested on a false charge which was later dismissed when the guilty party, one Forman, entered a plea of guilty. This arrest of plaintiff took place on April 17, 1941 (R-31). The plea of guilty by Forman took place in June, 1941.

The placard containing plaintiff's picture with the caption, "check artist," remained on display in defendant's store for a period of approximately 15 months after the conviction of Forman and the dismissal of the charges against plaintiff.

None of the employees engaged as clerks in defendant's store had any duty or interest with respect to the cashing of checks, and they were not permitted to accept checks from any customer. When checks were offered, the clerks were required to refer the customer to the cashier at the Information Desk (R-20). Testimony of Waltman, store manager (R-26).

Trial was had to the Court sitting with a jury and

resulted in a verdict for defendant. From the judgment entered thereon, following denial of motion for new trial, plaintiff has appealed.

## SPECIFICATIONS OF ERROR

### I.

The Court erred in entering a judgment upon the verdict and in favor of appellee (R-45, 46).

### II.

The Court erred in sustaining an objection to the testimony of witness, Jean Pierce, that she had told various persons of the presence of the photograph of appellant in the defendant's store wherein he was portrayed as a "check artist" (R-15).

### III.

The Court erred in sustaining an objection to the testimony of plaintiff's witness, Ray Mohney, respecting whether the witness knew the picture of plaintiff had been placed in defendant's store (R-28).

### IV.

The Court erred in sustaining an objection to the testimony of plaintiff's witness, Ray Mohney, respecting whether the witness had been informed that the picture of plaintiff had been posted in defendant's store (R-28).

### V.

The Court erred in sustaining an objection to the tes-

timony of plaintiff's witness, Ray Mohnney, respecting whether the witness had told other persons about plaintiff's picture being placed in defendant's store (R-29).

## VI.

The Court erred in sustaining an objection to the testimony of plaintiff's witness, A. S. Mott, with respect to the witness having been informed that the picture of plaintiff had been posted in defendant's store (R-29).

## VII.

The Court erred in sustaining an objection to the testimony of plaintiff's witness, A. S. Mott, respecting the knowledge of the witness that the charges against plaintiff had been subsequently dismissed (R-30).

## VIII.

The Court erred in overruling an objection to the testimony of defendant's witness, E. J. Hummer, wherein he stated that the plaintiff was the party against whom he had made a complaint (R-36, 37).

## IX.

The Court erred in overruling an objection to the testimony of defendant's witness, Richard Dunning, who was Secretary of the Retail Trade Bureau of the Spokane Chamber of Commerce, and who testified that the photograph of plaintiff, wherein he was portrayed as a "check artist," had been received from the Police Department of the City of Spokane, and in turn delivered by him to defendant and other merchants (R-37, 38).



## X.

The Court erred in overruling appellant's motion for new trial (R-50).

## XI.

The Court erred in denying appellant's motion to set aside the verdict and for judgment n. o. v. for plaintiff.

## XII.

The Court erred in refusing to give the Instruction No. 3 requested by the appellant which reads as follows:

"You are instructed that you must distinguish between the evidence which has been introduced by the defendant for the purpose of establishing the truth of the publication and that which was introduced by the defendant for the purposes only of mitigating or lessening the damages. You are instructed that where a publication of the character of that complained of by the plaintiff is falsely made, the right of the plaintiff to recover damages by reason of such publication is absolute and the only question which remains for the jury to determine, if they find the defamatory matter, or any part thereof, pertaining to plaintiff to be false, is the amount of damages to which under all of the circumstances shown by the evidence the plaintiff is entitled."

## XIII.

The Court erred in refusing to give Instruction No. 5 requested by the appellant which reads as follows:

"I further instruct you that if you find that the defendant has failed to sustain its burden of proving that the defamatory matter complained of was true, then you must find for the plaintiff and the



fact that defendant may have received the defamatory matter from some other person or agency does not excuse or relieve defendant from liability.

#### XIV.

The Court erred in refusing to give Instruction No. 9 requested by the appellant which reads as follows:

“I further instruct you that one who publishes defamatory matter is liable for the injurious consequences of the repetition thereof by third persons where such repetition is the natural and probable result of the original publication. 33 Am. Jur. Sec. 197, p. 185.

#### XV.

The Court erred in refusing to give Instruction No. 11 requested by the appellant which reads as follows:

“You are instructed that if you find that the defamatory matter complained of was untrue, nevertheless, if you also find from the evidence that the said defamatory matter was published without malice on the part of defendant, but in good faith, believing it to be true, then in that case your verdict should be confined to the actual damages sustained by plaintiff, because in this state malice is not an essential element of civil libel and plaintiff may obtain a recovery even though defendant may have acted in good faith. *Wilson v. Sun Pub. Co.*, 85 Wash. 503 148 Pac. 774.

#### XVI.

The Court erred in refusing to give Instruction No. 13 requested by the appellant which reads as follows:

“I instruct you further that the defendant has the burden of proving the defamatory matter true

and that this proof must be as broad as the charge; that is to say, in this case, the defamatory matter complained of charges the plaintiff with having committed the crime of forgery. The defendant, therefore, in order to sustain its burden of proving the libel true must prove that the plaintiff was convicted of the crime charged. It is for you to say whether the defendant has sustained this burden of proof. 103 Kansas 192, 173 Pac. 414, L. R. A 1918 F. 153."

### XVII.

The Court erred in refusing to give Instruction No. 14 requested by the appellant which reads as follows:

"I instruct you further that it is no defense that the defendant may have published the libel complained of in good faith or in the absence of malice, nor may good faith on the part of the defendant or the absence of malice be considered by you in mitigation of damages. *Carey v. Hearst Publications*, Vol. 119, No. 16, Wash. Decisions page 997."

### XVIII.

The Court erred in predicating his memorandum decision, indicating a denial of plaintiff's motion for new trial, upon certain portions of and passages from an opinion rendered in another case pending in the same court entitled *Holden v. American News Company*, 52 Fed. Supp. 24, for the reason that this method of duplicating memorandum decisions by partial references is confusing and uncertain, and leaves the premises upon which the Court's conclusion apparently is reached in doubt since the facts, relationship of parties and issues joined by pleadings and evidence in this case and the so-called Holden case are diametrically opposite in every respect.

## XIX.

The establishment of a qualified privilege in the instant case, based upon the discussion of the Court in its opinion in the Holden case, when the libel is confessedly false and libelous *per se* is erroneous and not in keeping with any of the late decisions of the Supreme Court of Washington.

## SUMMARY OF ARGUMENT

1. Malice is not an essential element to be proven in a civil action for libel, and the good faith of the defendant in publishing a libel is not a legal defense under the latest decisions of the Supreme Court of the State of Washington.

2. Under the decisions of the Supreme Court of Washington there is no privilege in libel cases where the published article is libelous *per se* and is not proven to be true.

3. The Court committed reversible error in refusing to permit plaintiff to introduce testimony respecting the circulation and repetition by third persons of the libel complained of.

4. Testimony tending to show appellant had been arrested and that plaintiff's Ex. A was delivered to respondent by the Spokane Police Department was incompetent and should not have been admitted.

5. The latest decisions of the Supreme Court of the State of Washington contain the law applicable to this case and are binding upon the United States District Court for the Eastern District of Washington.

## ARGUMENT

## 1 and 2

Plaintiff requested the Court to instruct the jury that, even though the libelous matter was published without malice and in good faith by the defendant, nevertheless, if the defamatory matter was untrue, the jury should find for the plaintiff as malice is not an essential element of civil libel and the good faith of the defendant could not preclude a recovery by the plaintiff. Plaintiff's requested instructions 11 and 14 read as follows:

## Instruction 11

"You are instructed that if you find that the defamatory matter complained of was untrue, nevertheless, if you also find from the evidence that the said defamatory matter was published without malice on the part of defendant, but in good faith, believing it to be true, then, in that case your verdict should be confined to the actual damages sustained by plaintiff, because in this state malice is not an essential element of civil libel and plaintiff may obtain a recovery even though defendant may have acted in good faith. *Wilson v. Sun Pub. Co.*, 85 Wash. 503."

## Instruction 14

"I instruct you further that it is no defense that the defendant may have published the libel complained of in good faith or in the absence of malice, nor may good faith on the part of the defendant or the absence of malice be considered by you in mitigation of damages.

33 Am. Juris. Sec. 272, p. 256;

Wigmore on Evidence, Sec. 74, 90 A. L. R. 1169."

The Court refused to so instruct and further instructed the jury that the plaintiff had the burden of proving malice in order to recover (R-38h). It is respectfully submitted that this was an erroneous statement of the law, and that plaintiff's requested instructions 11 and 14 embraced the true rule as shown by the following authorities which are submitted in support thereof:

*Ziebell v. Lumberman's Printing Co.*, 14 Wash. (2d) 261;

*Blende v. Hearst Publications*, 200 Wash. 426, 93 Pac. (2d) 733, 124 A. L. R.;

*Hollenbeck v. Post-Intelligencer Co.*, 162 Wash. 14, 297 Pac. 793;

*Wilson v. Sun Publishing Co.*, 85 Wash. 503, 148 Pac. 774;

*Holden v. American News Co.*, 52 Fed. Supp. 24, U. S. District Court E. D. W.

District of Washington, Northern Division;  
*Graham v. Star Publishing Co.*, 133 Wash. 387;  
*Byrne v. Funk*, 38 Wash. 506;  
*Carey v. Hearst Publications, Inc.*, Vol. 119, No. 16 Washington Decisions, page 997;  
*Miles v. Wasmer*, 172 Wash. 466; 20 Pac. (2d) 847.

In the *Ziebell* case, *supra*, the Court specifically passed upon the question of malice, and Judge Driver, in writing the opinion for the Court, stated at page 266:

"Malice is not an essential element of civil libel.  
*Wilson v. Sun Pub. Co.*, 85 Wash. 503, 148 Pac. 774,



Ann. Cas. 1917B, 442; *Hollenbeck v. Post-Intelligencer Co.*, 162 Wash. 14, 297 Pac. 793; *Blende v. Hearst Publications, Inc.*, 200 Wash. 426; 93 P. (2d) 733, 124 A. L. R. 549. But, aside from that, the publication proscribed as criminal libel in the cited statute, in so far as it pertains to living persons, also constitutes libel per se. As stated in *Graham v. Star Pub. Co.*, 133 Wash. 387, 389, 233 Pac. 625: ‘. . . any publication which falsely charges a person with the commission of a crime or comes with (in) Sec. 2424, Rem. Comp. Stat. (P. C. Sec. 8953), is libelous per se. . . .’

“In *Wilson v. Sun Pub. Co.*, *supra*, Judge Ellis, the author of the opinion, commented on this statute as follows:

“ ‘Eliminating the statutory element of malice, either actual or implied, an essential only of criminal libel, this definition meets the essentials of libel actionable per se as generally recognized in civil actions for damages. Newell, Slander and Libel (2d ed.), p. 43.’ ”

In the *Graham* case, *supra*, the defense urged was a qualified privilege and that in the absence of malice the publisher could not be held liable for damages. The Court in passing upon this stated at page 391:

“*The privilege ends when falsity begins, and if, as the complaint alleges, the charge is false, the privilege, if there was one, was therefore exceeded.*”

The above case has been cited with approval by later decisions of the Supreme Court of the State of Washington, and has been cited in the *Ziebell* case, *supra*, and again in the very recent case of *Carey v. Hearst Publications, Inc.*, *supra*. It is respectfully submitted



that this is particularly applicable to the instant case and that under the decisions of the State of Washington, the defendant had no privilege whatever, the defamatory matter in the instant case being libelous *per se* and wholly false.

Clearly, therefore, under the decisions of the Supreme Court of the State of Washington, plaintiff should not have been required to prove malice in order to defeat the alleged defense of privilege and the good faith of defendant in publishing the libel was wholly immaterial. The courts have repeatedly held that even though a person repeats a libel heard and names his authority he nevertheless is responsible for it.

33 Am. Jur. Sec. 95, p. 105;  
*Lathrop v. Sundberg*, 55 Wash. 144; 104 Pac.  
 176.

In his opinion in the *Holden* case, upon which Judge Schwellenbach has predicated his ruling in the instant case, an effort was apparently made to reconcile the decisions of the state Supreme Court of Washington on the subject of privilege and the duty of proving malice, in libel cases. In doing so, Judge Schwellenbach has overlooked the cardinal rule for Federal District Court judges who are passing upon matters controlled by the opinion of the Supreme Court of the state in which the Federal District Court is situated. He points to two "irreconcilable" positions taken by the Washington Court on the subject in hand, and states that the Washington Supreme Court has never attempted

to reconcile the apparent contradictions of its several opinions upon the subject.

It is by no means conceded that the decisions of the Supreme Court of Washington are in hopeless confusion on this subject. Rather it is urged that the Supreme Court of Washington long ago, and even in its latest expression laid down after the filing of Judge Schwellenbach's opinion in the *Holden* case, has definitely committed itself to the rule that no privilege exists in those cases of libel and slander where the defamatory words are actionable *per se*, and untrue.

What Judge Schwellenbach actually did in the *Holden* case was to seek solace in the language of *Ecuyer v. New York Life Insurance Company*, 101 Wash. 247, and disregard every expression of the Washington Supreme Court laid down thereafter by decision on the same subject. As illustrative of this reference is respectfully directed to the case of *Hollenbeck v. Post-Intelligencer Co.*, 162 Wash. 14, 297 Pac. 793. The following is quoted from the opinion:

"The theory of respondent is that the article was qualifiedly privileged. It contends that, in the absence of malicious and deliberate use of false and libelous matter, respondent is not liable. Great reliance is placed by respondent on the decisions in *McClure v. Review Publishing Co.*, 38 Wash. 160, 80 Pac. 303; *Chambers v. Leiser*, 43 Wash. 285, 86 Pac. 627, 10 Ann. Cas. 270; *Dayton v. Drumheller*, 32 Ida. 283, 182 Pac. 102, and 37 C. J. 33, to the effect that, if the averments of a complaint disclose facts constituting a qualified privilege, express malice must be averred."

The *Dayton v. Drumheller* case was a leading Idaho authority supporting this proposition

The Washington Supreme Court, continuing in the *Hollenbeck* case, stated:

“The rule in this state, contrary to what was said in the *Dayton* case, *supra*, is that malice is immaterial in a civil action for libel, when the article necessarily tends to expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse, or to injure any person, corporation or association of persons, in his or their business or occupation.”

The case of *Graham v. Star Publishing Company*, 133 Wash. 387, is and has since its announcement been landmark authority in libel cases for the proposition that:

“The privilege ends when falsity begins, and if, as the complaint alleges, the charge is false, the privilege, if there was one, was therefore exceeded.”

In the instant case the libel case was confessedly false; in fact no effort was made by the defendant to pretend to prove its truth. It was manifestly libelous, *per se*, because it charged the appellant with being a “check artist,” which has only one definition in common parlance.

The answer to this situation, so far as the substance of instructions to the jury may have bearing upon the ultimate determination of this appeal may be found in *Carey v. Hearst Publications, Inc.*, *supra*. There privi-

lege was claimed on the ground that the newspaper was reporting a judicial proceeding, and the Court said :

“Truth of a story, libelous per se, is a complete defense. If the story be false, however, qualified privilege does not absolve the publisher even though the charges be made in good faith.” (p. 701, published opinion)

In his opinion in the *Holden* case Judge Schwollenbach said :

“The phrase ‘the privilege ends when falsity begins’ is attractive but dangerous because of its very attractiveness. \* \* \*”

The *Holden* opinion quotes further from Mr. Justice Frankfurter in *Tiller v. Atlantic Coast Line R. Co.*, 318 U. S. 54, 68, who used some glittering verbiage when he stated :

“\* \* \* an excellent illustration of the extent to which uncritical use of words bedevils the law. A phrase begins life as a literary expression ; \* \* \* and repetition soon established it as a legal formula, indiscriminatingly used to express different and sometimes contradictory ideas. \* \* \*”

However persuasive this discussion of the inept use of words in the law may have appeared to the writer of the opinion in the *Holden* case, the Washington Supreme Court remained uninfluenced when it later handed down its opinion in the *Carey* case ; for after citing their prior opinions in *Graham v. Star Publishing Co.*, *supra*, and *Hollenbeck v. Post-Intelligencer Company*, *supra*, they quoted again with approval the language

used in the two cases; namely, "The privilege ends when falsity begins, and if the charge is false, the privilege, if there was one, was therefore exceeded."

Continuing in the *Carey* case, the Washington Supreme Court said:

"The article was libelous, *per se*. If false, its publication did not fall within the rule of qualified privilege. In such case, it is not necessary to prove malice. *Miles v. Louis Wasmer, Inc., supra*.

"The appellants requested an instruction as follows:

" 'When a newspaper merely reprints a dispatch sent from a distant city by a reputable news service, that newspaper is not held to the same responsibility for the truth of the report published as in instances when a newspaper's own reporters gather the news and write the story.'

"The court rejected the request, and, instead instructed the jury that the fact the article was a news item received from the Associated Press 'does not constitute either excuse or justification.' Appellants' request finds support in the case of *Layne v. Tribune Co.*, 108 Fla. 177, 146 So. 234, 86 A. L. R. 466. That decision, however, appears to be against the weight of authority. The prevailing rule in this country was epitomized by Mr. Justice Holmes in *Peck v. Tribune Co.*, 214 U. S. 185, 189, 53 L. Ed. 960, 29 S. Ct. 554, 16 Ann. Cas. 1075: 'If the publication was libelous the defendant took the risk. As was said of such matters by Lord Mansfield, "Whatever a man publishes, he publishes at his peril." ' *Schuyler v. Busbey*, 68 Hun. 474, 23 N. Y. Supp. 102 (affirmed 142 N. Y. 680, 37 N. E. 825); *Sanders v. Times-Picayune Pub. Co.*, 168 La. 1125, 123 So. 804; *A. H. Belo & Co. v. Smith*, 40 S. W. 856 (affirmed 91 Tex. 221, 42 S. W. 850). In 39 Am.



Jur. 20, Sec. 32, the rule is cited as follows:

“‘It is ordinarily held that the publication of defamatory matter by a newspaper is not privileged by reason of the fact that it is copied from another publication, or comes through the regular channels of news collection, without any notice of its falsity, and that the newspaper publishing it is liable in damages to the person libeled, in the absence of other justification.’

“The principle stated was applied in *Miles v. Louis Wasmer, Inc.*, *supra*. Remoteness of the source of a defamatory article does not serve to diminish its harmful effect nor to mitigate the damage caused by it.”

### 3.

Plaintiff at the trial of this action submitted testimony of the repetition by third persons of the libel and requested an instruction that defendant was liable for the injurious consequences of the repetition of the libel by third persons where such repetition was the natural and probable result of the original publication. (Plaintiff's Requested Instruction No. 9 (R-42)).

#### Instruction No. 9

“I further instruct you that one who publishes defamatory matter is liable for the injurious consequences of the repetition thereof by third persons where such repetition is the natural and probable result of the original publication.

33 Am. Jur. Sec. 197, p. 185.”

The Court refused to so instruct and refused to permit plaintiff to introduce testimony respecting the foregoing. It is respectfully submitted that the refusal to give this requested instruction constituted reversible



error, as the Courts have held that the testimony of repetition by third persons of the libel were properly admissible and whether or not the secondary publication was the natural and probable consequence of the original defamation, which could have been anticipated, was a question for the jury. In the instant case, it is respectfully submitted, that by reason of the tender age of the various sales girls employed, the defendant should have anticipated that they would repeat and republish the libel.

In the case of *Sawyer v. Gilmers, Inc.*, 126 S. E. 183, 189 N. C., reported in 41 A. L. R. 1184, the Court permitted testimony respecting the repetition and circulation of the libel and in its opinion (41 A. L. R. p. 1189) stated as follows:

“Defendants contend that it was error to admit as evidence the testimony of repetitions of the slanderous words alleged to have been uttered by defendants. This contention is presented by exceptions to questions addressed to and to answers made by plaintiff and witness Abner Pope. His Honor expressly instructed the jury that—

“This ‘testimony was not evidence on the question as to whether or not the defendant Beavers actually accused plaintiff of stealing, but was to be considered by the jury as evidence only upon the question as to whether or not plaintiff’s general reputation had been damaged as a result of such words.’

“The evidence was competent for the purpose to which his Honor thus limited it, and the assignments of error based on these exceptions are not sustained.”

In the case of *Merchants' Ins. Co. v. Buckner*, 98 Fed. 222, a similar situation arose, and the Court permitted testimony showing the witness heard the libel discussed, and that it was generally known. The Circuit Court of Appeals for the Sixth Circuit in the *Merchants' Insurance* case, in reversing the judgment of the Court below and remanding the case for new trial, stated as follows:

“A recovery may be had for such publication of the libel as is a natural consequence of putting the letter into circulation. It is a question of fact for the jury to say how far the circulation proven of the charges in question is a natural consequence of the sending of the letter by the manager of the insurance company to the secretary of the local board. The learned judge who presided, as we have seen, directed the jury to consider the circulation of the libelous words by members of the board or others, without requiring the jury to find that such circulation was a natural consequence of the act of sending the letter containing the libelous matter to the secretary. We are of the opinion that this was substantial error. It gave the jury a wrong basis upon which to award damages, which might be quite prejudicial to the plaintiff in error. For error in the charge in this respect, the judgment below is reversed and the case is remanded for new trial.”

Thus the Circuit Court of Appeals in this case held such testimony would be admissible, and that it was a question for the jury to say how far the circulation was a natural consequence of the original libel.

*Sawyer v. Gilmers, Inc.*, again on page 1190 the Court stated as follows:

“If the defamation is uttered under such circumstances as to time, place, or conditions as that a

repetition or secondary publication is the natural and probable consequence of the original defamation and damage resulting therefrom, he is liable for such damage and evidence of such repetition or secondary publication and of damages resulting therefrom is admissible. It is for the jury to determine, under instructions of the court, whether, in view of the circumstances under which the original defamation was uttered, a secondary publication or repetition was the natural and probable consequence of such defamation which could and should have been foreseen or anticipated by the defendant in an action for damages for the original defamation."

As pointed out in the *Suick v. Krom* case, Wis. 254, 177 N. W., 20, 41 A. L. R. 1191:

"The extent to which the incident was discussed among plaintiff's friends and neighbors contributed to her disgrace, increased the injury to her feelings, and injuriously affected her reputation. We think it was proper for the jury, in determining the amount of damages, to take into consideration the extent to which the fact that the accusation had been circulated among plaintiff's friends and neighbors, excluding, of course, the circulation for which she was responsible."

It is respectfully submitted that by virtue of the peculiar nature of libel, the extent of the repetition and circulation of the libel must necessarily be proven by persons to whom the libel has been imparted. This becomes particularly significant with respect to the manner and method of the publication adopted by the defamer. Manifestly, if the method of publication is one in which no care is exercised to restrict the publication to any particular persons, but is exhibited in such

a manner as to cause it to come to the attention of persons not connected with the business of the defendant, as in the instant case, the extent of such circulation and repetition becomes extremely important, and under the foregoing authorities is a question for the jury as to how far such circulation was a natural consequence of the original libel.

Plaintiff sought to introduce testimony as to the circulation and repetition of the libel, and upon the sustaining of objections thereto submitted an offer of proof along this line (R-28, 29).

It is respectfully submitted, therefore, that the refusal of the Court to permit plaintiff-appellant to introduce testimony respecting the circulation and repetition by third persons of the libel complained of constitutes reversible error.

4.

The Court erred in overruling plaintiff's objection to the testimony of defendant's witness, E. J. Hummer, wherein he stated that the plaintiff was the party against whom he had made a complaint. We feel that whether the witness, Hummer, made a complaint was wholly immaterial and incompetent and should have been excluded from the testimony adduced at the trial.

It is further respectfully submitted that the Court erred in overruling plaintiff's objection to the testimony of Richard Dunning wherein he testified that the photograph of plaintiff, Exhibit A, wherein he was portrayed as a "check artist" had been received from the

Police Department of the City of Spokane, and in turn delivered by him to defendant and other merchants. We feel that this testimony should have been excluded as the good faith of the defendant or the fact that the defamatory material may have been received from some other person or agency does not exclude or relieve defendant from liability, and that the Court did further err in refusing to give plaintiff's requested Instruction No. 5 (R-41).

33 Am. Jur. Sec. 95, page 107.

See cases cited under I and II of Argument. this brief.

## 5.

The last expression of the Supreme Court of Washington, particularly where it is plain that some of the prior opinions of the Court on the same subject are in contradiction, is the rule which is binding upon the Federal Courts under the fundamental rule expressed found in *Erie Railroad Co. v. Thompkins*, 304 U. S. 64.

The State of Washington has held in the case of *Puget Mill Co. v. Kerry*, 183 Wash. 542, 49 Pac. (2d) 57, that where there are two cases having inconsistent decisions, the later one must be taken as controlling and the Court in its opinion stated at page 559:

“In the earlier case of *Harvard Investment Co. v. Smith*, 66 Wash. 429, 119 Pac. 864, it is possible that a different rule was laid down. The case last cited was not referred to in the case of *DeLano v. Tennant*, *supra*, and, in so far as any inconsistency may exist between the two cases, the older case must be held to have been overruled by the later, which



we are convinced correctly declares the law.”  
As stated in 14 Am. Jur. Section 103, page 323:

“*Effect of conflicting state decisions.* If there is any conflict in the decisions of the state tribunals, the general rule is that the latest settled adjudications will be followed in preference to the earlier ones.”

In the case of *Abraham v. National Biscuit Co.* (C. C. A. 3rd) reported in 89 Fed. (2d) 266, 111 A. L. R. 1313, the Court stated:

“We understand the true rule to be that when the decisions of the highest court of a state construing a state statute are in conflict the Federal Courts will follow the latest settled adjudication of the state Supreme Court, rather than the earlier ones, except in cases where contracts have theretofore been entered into, or rights or title acquired on the faith of the earlier decisions. See *Jackson v. Harris* (C. C. A. 10th) 43 Fed. (2d) 513, pages 516, 517, in which case the authorities are collected. \* \* \*”

The United States Supreme Court has held to like effect and it is respectfully submitted that it is the settled law of the country that where decisions are in conflict the national courts always follow the latest adjudications of the highest court of the state rather than the earlier ones.

*Bauserman v. Blunt*, 147 U. S. 647;

*Wade v. Travis County*, 174 U. S. 499;

*Practice Conformity Act*, 28 U. S. C. A. Sec. 724;



*State ex rel. Attorney General v. Irby*, 81 S. W. (2d) 419;

*Jolley v. Clemens*, 82 Pac. (2d) 51;

*Libby v. Southern Pac. Railway*, 219 Pac. 604.

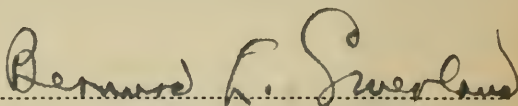
That the Federal Courts must now follow the state decisions on questions of unwritten or common law has become so well settled by the case of *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, that plaintiff will not burden the Court with any further discussion on this phase of the matter.

14 Am. Jur., Section 90, page 303;

*Madden v. Commonwealth of Kentucky*, 309 U. S. 83.

Therefore, a single reading of the *Carey* opinion (*Carey v. Hearst Publications, Inc.*, Vol. 119, Wash. Dec., 997), we respectfully submit, calls for a reversal of this case and a remand for retrial.

For all of the reasons set forth in this brief, appellant respectfully submits that the judgment of the United States District Court in said cause should be reversed and the case remanded to the United States District Court for retrial.

  
 .....  
*Attorney for Appellant.*

BERNARD L. SWERLAND,  
 1208 Old National Bank Bldg.,  
 Spokane, Washington,  
*Attorney for Appellant.*

No. 10709

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United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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MARVIN S. NICHOLS,	}
<i>Appellant,</i>	
vs.	
J. J. NEWBERRY COMPANY, a corpo-	
ration,	}
<i>Appellee.</i>	

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BRIEF OF APPELLEE

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*Upon Appeal from the District Court of the United  
States for the Eastern District of Washington  
Northern Division.*

---

EDGE, DAVENPORT, KEITH, &  
dePENDER, LESTER P. EDGE,  
HARRY T. DAVENPORT,

909 Paulsen Building,

Spokane, Washington.

*Attorneys for Appellee.*

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PAUL P. O'BRIEN,

CLERK



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EDGE, DAVENPORT, KEITH, &  
dePENDER, LESTER P. EDGE,  
HARRY T. DAVENPORT,  
909 Paulsen Building,  
Spokane, Washington,  
*Attorneys for Appellee.*



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## STATEMENT OF THE CASE

Appellant's statement is incomplete, especially as concerns events leading up to the acts complained of— a material omission in a case where appellee's good faith is a vital element. Consequently the following statement, of facts deemed indisputable, is submitted:

On April 17, 1941, on the complaint of one Hummer that appellant had cashed a forged check at his store, appellant was arrested on a charge of forgery and put in jail. While he was there another person pleaded guilty to the forgery, and after having been in jail 27 days appellant was released from custody; and subsequently the charge was dismissed. (R. 31.)

Appellee had no connection with these occurrences, and knew nothing of them.

About this time the police department of the City of Spokane delivered to the Retail Trade Bureau, a branch of the Chamber of Commerce composed of the leading merchants of the city, two sets of photographs, evidently in numerous counterparts, with police numbers thereon, designated respectively as "check artists," which included a picture of appellant, and "shoplifters." The Retail Trade Bureau distributed the pictures to leading merchants,

including appellee's manager, at a bureau luncheon. (R. 25, 37.) This was done without any request of appellee. (R. 27, 38.)

Many times other groups of photographs had been brought direct from the police department and left with appellee. (R. 27.)

In this instance appellee's manager posted the pictures on a piece of cardboard, which was framed and put in the bulletin board in the restroom for girl employees. The pictures were kept there from the early part of 1941 until September, 1942. Appellant's picture was placed under the title "Check Artists," according to pencil notations made by the police department on the backs of the pictures. (R. 26.)

The girl employees were instructed to be on the lookout for those parties and if they saw anybody do anything to report it. The salesgirls and wrappers had no authority to cash checks but would refer them to the cashier. (R. 24, 26.)

Appellee usually employed about sixty girls, and between 140 and 180 at Christmas time. The turnover was rapid.

The restroom was on the second floor. The door leading to it was marked "Employees Only," and

was closed but not locked. It led first to a hall about 15 feet long and 4 feet wide, which opened into the restroom. (R. 24.)

The restroom was a large room with tables, chairs and a couch, and contained a lavatory. Each girl had a locker. They visited the restroom on arriving in the morning, at lunch time, during the afternoon rest period, and on leaving in the evening. A matron was usually there.

No one was allowed in the room but the girl employees, janitors and repairmen. (R. 26.)

The bulletin board containing the picture was placed upon a cage where the matron was located. (R. 19.) The pictures were placed in the bulletin board and locked. (R. 23.)

Notwithstanding the implication at the middle of page 3 of appellant's brief, there was no evidence that any customer ever used the restroom. Another restroom for customers was maintained. If any one happened to go into the employees' room by mistake, he was told to get out, that the room was intended for employees only. (R. 19.)

When it came to the attention of appellee's manager that there was some claim about one of the pictures, he took them all down. (R. 27.)



## SUMMARY OF ARGUMENT

1. The posting of appellant's picture in employees' restroom was privileged.

2. The publisher of a privileged communication is not liable for unauthorized repetition by persons to whom, in the exercise of the privilege, the information has been confided.

3. Testimony of witness Hummer, identifying appellant, was properly admitted, truth of the publication being an issue, and appellant himself having testified to the same effect.

4. Testimony of Secretary of Retail Trade Bureau, that he had received pictures from the Police Department and distributed them to merchants, was relevant as bearing upon appellee's good faith.

## ARGUMENT

## I.

*Privilege*

Appellant takes the position that, in Washington, no privilege exists if the defamatory matter is untrue. (Brief of Appellant, 11.)

In support, appellant cites a group of cases at page 12. A glance at the names of the defendants

exposes the fallacy of the argument. The defendants are all newspapers or magazines, except Funk, who was the publisher of a newspaper, the news columns of which were in question, and Louis Wasmer, Inc., which was the proprietor of a broadcasting station. One who publishes to the whole world can claim no privilege except the right to comment on the facts as a matter of public interest.

The privilege involved in the instant case, on the other hand, is the qualified privilege of one who, for the protection of his own interest, makes a communication to others having a corresponding interest or duty, the only question being whether he abused the privilege by acting in bad faith, or by communicating information not reasonably necessary to the operation of the business, or by communicating it to persons whose knowledge about it was not reasonably required—a question decided by the jury in appellee's favor on a correct instruction. (R. 38-g.) Where such privilege exists, conditioned as above, the communication, though it be false, is not actionable.

33 Am. Jur., Libel and Slander, Secs. 126,  
- 171;

Restatement of the Law, Torts, Sec. 593  
*et seq.*, and scope note preceding Sec. 593.

The distinction, upon this point, between publications by newspaper or radio and private communications or matters of mutual concern is admirably stated by the trial court in *Holden v. American News Co.*, (Dist. Ct., E. Dist. Wash., N. D. 1943), 52 F. Supp. 24, the material portion of which is printed in the record, pp. 51-59.

Appellant speaks (Brief, 14) as though the trial court found the Washington decisions irreconcilable. On the contrary, the court found them distinctly reconcilable. If they were not, and appellant's view should prevail, the law of Washington on the subject would indeed be an anomaly.

The qualified or conditional privilege attendant upon private communications was recognized in Washington as early as *Kimble v. Kimble*, 14 Wash. 369, where a letter from a son to his mother, even though containing matter which was libelous, was held privileged, unless the plaintiff could show malice.

The general principle, thus followed, was later applied in the following cases:

*Chambers v. Leiser*, 43 Wash. 285, 86 Wash. 627, (letter from one stockholder to another);

*Fahey v. Shafer*, 98 Wash. 517, 167 Pac. 1118 (communications by street-level clothiers to general manager and advertising manager of a newspaper and the Retail Clothiers' Association, at a luncheon, and to the president of the Ad Club and the chairman of its "vigilance committee," concerning an upstairs clothing firm);

*Ecuyer v. New York Life Insurance Co.*, 101 Wash. 247, 172 Pac. 359 (communication to parent touching minor son's conduct, and communication to one to whom had applied for employment).

*Prins v. Holland-North America Co.*, 107 Wash. 206, 181 Pac. 680. (letter written in Dutch language from main office of corporation in Holland to branch office in Seattle, where it was read by co-manager and bookkeeper).

Compare *Lathrop v. Sundberg*, 55 Wash. 144, 104 Pac. 176 (privilege clearly exceeded by publishing communication in newspapers);

*Stevens v. Haering's Grocetorium*, 125 Wash. 404, 216 Pac. 870 (statement made to police officers in a loud and unduly harsh manner, over a telephone located in a public market, and within the hearing of many, held not privileged).

Thus, the Washington court has shown no inclination to ignore the universally accepted rule that communications made in good faith on a subject in which the person communicating has an interest or duty to a person having a corresponding interest or duty, such as communications between employer and employee, are privileged; but, on the contrary, has repeatedly recognized and applied it.

Somewhat similar to our case upon the question whether the privilege was exceeded are:

*Ramsdell v. Pennsylvania Railroad Company*, (1910) 79 N. J. L. 379, 75 A. 444, where notice of the discharge of a dining car conductor was posted in the office of the dining car department, and it was held error to have excluded evidence that other persons besides dining car conductors had been seen in the room, and *Sheftall v. Central of Georgia Ry. Co.* (1905) 123 Ga. 589, 51 S. E. 646. In the latter case a conductor who had been

discharged kept some unused railway and sleeping-car tickets. The company posted notices with plaintiff's name and the ticket numbers, implying that plaintiff would endeavor to pass the tickets. The notices were posted in places where classes of employees who did not handle tickets, and members of the public, could see them. The court held that the occasion was privileged, but that plaintiff was entitled to a clear and specific instruction concerning the intent and manner of publication.

In the present case, all the evidence offered as to who saw the picture was received, and the question whether the privilege had been in any way exceeded was put before the jury by proper instructions.

It is concluded that a distinction between newspaper publications or radio broadcasts to the wide world, and restricted private communications in certain well-defined or logically definable circumstances, exists in Washington as elsewhere; that communications between an employer and his employees constitute one of such well-defined situations and so are conditionally privileged; and that in this instance the question whether the publication was in good faith and whether the privilege had been exceeded was properly submitted to the jury.



## II.

*Repetition by Employees to Persons  
Outside Store*

Appellant asked Jean Pearce, one of the sales-girls, concerning the photograph, "Did you tell anyone after you saw it?" The court excluded the testimony upon the ground that it was not a natural and logical consequence. (R. 15, 17.)

This was right, the publication being privileged.

*McBride v. Ledoux*, (1904) 119 La. 398,  
35 S. 615;

*Vacicek v. Trojack*, (Ct. Civ. App. Tex.  
1920) 226 S. W. 505;

*Rigney v. W. R. Kessee Co.*, (1927) 104  
W. Va. 168, 139 S. E. 650, 54 A. L. R.  
1139.

The reasoning is stated in the case last cited,  
54 A. L. R., p. 1143:

"In case of a privileged communication, such as the one here, the primary object of its author is to protect and advance his business interest, and not to affect the reputation of the one maligned. It is for that reason that he is relieved at law from any imputation of malice. Consequently, if we regard the author as having no animus toward and no desire to injure the one libeled, it follows on principle that he

should not be called to answer for a republication unless it appears that a republication was contemplated or intended by him."

The fact that some of the employees may have told persons outside the store would not tend to prove that such a consequence should have been anticipated as natural and probable.

Moreover, the testimony got in anyway. Helen Coffee, who worked at the store one day, testified that Jean Pearce had previously told her (R. 22); Frances Mohney testified that she had told her father and may have told others (R. 21); Ella C. Mott had ascertained the fact (R. 34); appellant and his wife had learned of it (R. 31, 36); and appellant knew that it had come to the attention of his friends and neighbors (R. 34). Notwithstanding all this testimony, the jury's verdict was for appellee, after an instruction by the court that the privilege depended, among other conditions, upon the appellee's having made every reasonably careful effort that no one except those who had the duty or interest with respect to the defamatory matter had access to it. (R. 38-g.)

Thus, the exclusions were correct; and, in any event, were harmless.

## III.

*Hummer's Testimony*

Error is assigned on admission of the testimony of E. J. Hummer, identifying appellant as the person who had cashed checks at his store and as the person against whom he had made the complaint. (R. 36.)

The truth of the publication was an issue, and while it was not pursued, and appellant did not cross-examine Hummer, the testimony was certainly relevant and material.

Futhermore, appellant himself had already testified on direct examination to exactly the same effect (R. 31, 32) so that the evidence was invited; and in any event it was a duplication, and, so, harmless.

## IV.

*Source of Information*

Error is also assigned on the admission of the testimony of Richard Dunning, secretary of the Retail Trade Bureau, to the effect that the photograph of appellant had been received from the Police Department and in turn delivered by him to appellee and other merchants.

It is a condition of the privilege that the pub-

lisher believe the communication which he publishes to be true, and have reasonable grounds for so believing.

33 Am. Jur., Libel and Slander, Sec. 126,  
p. 126;

Restatement of the Law, Torts, Secs.  
600, 601.

The sources of his information and the circumstances under which he receives it are clearly of primary importance in determining the honesty and reasonableness of his belief.

See *Fahey v. Shafer*, 98 Wash. 517, 522,  
524, 167 Pac. 1118, 1120, 1121.

Dunning's testimony, therefore, was of the greatest materiality and was properly received.

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## CONCLUSION

This case illustrates the subject of conditional privilege in the law of libel. It is found that the decisions in Washington are in accord with universally stated rules. The court's instructions followed the law exactly, and no error occurred in the rulings on evidence.

The judgment on the verdict of the jury should be affirmed.

Respectfully submitted,

EDGE, DAVENPORT, KEITH, &  
dePENDER, LESTER P. EDGE,  
HARRY T. DAVENPORT,  
909 Paulsen Building,  
Spokane, Washington,  
*Attorneys for Appellee.*









